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Briefings on How To Use the Federal Register
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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ALBUQUERQUE, NM

- WHEN:** December 8, at 9:00 am
- WHERE:** University of New Mexico
Continuing Education Bldg., Room I
1634 University Blvd., NE
Albuquerque, NM
- RESERVATIONS:** Julie Stone
505-768-3532

WASHINGTON, DC

- WHEN:** November 30, at 9:00 am
- WHERE:** Office of the Federal Register
Seventh Floor Conference Room
800 North Capitol Street, NW, Washington, DC
- RESERVATIONS:** 202-523-4534

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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Enhanced Food Package for Breastfeeding Women

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to better assist breastfeeding WIC participants. The Department is establishing and enhanced WIC food package (Food Package VII) for breastfeeding women whose infants do not receive formula from the WIC Program. The current types and quantities of supplemental foods are retained in Food Package V for pregnant women and for women who are supplementing breastfeeding with any amount of formula provided by WIC. New Food Package VII contains the same supplemental foods as are currently available to breastfeeding women in Food Package V, but with augmented amounts of juice, cheese, legumes (beans, peas and peanut butter) and with the addition of two new items: Carrots and canned tuna.

This final rule differs only slightly from the proposed rule published March 19, 1992 (57 FR 9505). The final rule differs in that Food Package VII clarifies that canned tuna may be packed in oil or water. Additionally, under this final rule dried beans and peas may be substituted for peanut butter.

EFFECTIVE DATE: This regulation is effective December 28, 1992, and must be implemented no later than December 28, 1993.

FOR FURTHER INFORMATION CONTACT:

Barbara Hallman, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305-2730.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final rule has been reviewed under Executive Order 12291, and has been determined to be not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of \$100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-12). The Administrator of the Food and Nutrition Service has certified that this final rule will not have a significant economic impact on a substantial number of small entities. State and local agencies will be most affected because the addition of a food package increases program administrative activities. Breastfeeding participants who choose to receive this food package will be affected because of the additional amounts of food provided to them. Consequently, breastfeeding women's infants will also be affected because the breastfeeding participant will receive additional amounts of nutrients with the increased amount of foods. This increase in nutrients can positively influence the quality of breastmilk provided to the infant.

Paperwork Reduction Act

This final rulemaking imposes no new reporting or recordkeeping provisions that are subject to OMB review in

accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

The Special Supplemental Food Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice at 48 FR 29114 (June 24, 1983)).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows:

- (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18;
- (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9;
- (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and
- (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

The Department's Support of Breastfeeding

The Department is strongly committed to the support and promotion of breastfeeding. Breastfeeding promotion is a priority for many public health programs, including the WIC Program. Nutritional and medical research has shown that there is no better food than breastmilk for a baby's first year of life (Institute of Medicine Report, *Nutrition During Lactation*, 1991). Since a major goal of the WIC Program is to improve the nutritional status of infants, WIC

mothers are encouraged to breastfeed their infants. Additionally, the Administration established as a national goal the improvement of the incidence and duration of breastfeeding (Objective 14.9) in "Healthy People 2000—National Health Promotion and Disease Prevention Objectives." However, despite efforts to promote breastfeeding among a low-income target population, the incidence and duration of breastfeeding among this population in the United States are low (Institute of Medicine Report, *Nutrition During Lactation*, 1991). Consequently, in support of the Healthy People 2000 breastfeeding goals and to tailor food assistance to breastfeeding women more effectively, the Department establishes a new WIC food package for breastfeeding participants whose infants do not receive formula from the WIC Program—Food Package VII.

This is but one of several of the Department's initiatives to further support and promote breastfeeding. These initiatives are briefly discussed in appendix I to this preamble.

Background—The WIC Food Package

The authorizing legislation for the WIC Program, section 17 of the Child Nutrition Act of 1966, as amended (CNA), (42 U.S.C. 1786), established the WIC Program to provide supplemental foods and nutrition education to low income pregnant, breastfeeding, and postpartum women, infants, and children up to age 5 who are at nutritional risk. The Program also serves as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other harmful substance abuse, and to improve the health status of Program participants.

The CNA clearly established the WIC program as "supplemental" in nature; that is, the WIC food packages, including Food Package VII designed for breastfeeding women whose infants receive no formula from the WIC Program, are not intended to provide a complete diet but are designed to provide additional wholesome foods needed for a balanced diet. In addition to WIC, the Department administers a variety of other complementary food assistance programs which can work together to provide a more nutritious diet to needy Americans. The largest of these programs, the Food Stamp Program, provides general food assistance in the form of food stamps which are used to increase the food buying power of low income households. The National School Lunch Program and the School Breakfast Program provide

free and reduced price meals to low income children in school. Also, the Child and Adult Care Food Program provides meals to persons in child and adult care centers and children in family day care homes. A variety of commodity donation programs are also available to low income persons.

In addition to food assistance, WIC provides nutrition education, including information about the dangers of drug and other harmful substances, to participants. The nutrition education provided by WIC enables participants to make informed decisions in choosing foods which, together with the supplemental foods contained in the WIC food packages, can meet their total dietary needs.

Section 17(b)(14) of the CNA defines "supplemental foods" as "those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary." This legislation provides substantial latitude to the Department in designing WIC food packages, but obligates the Department to prescribe foods which effectively and economically supply those nutrients critical to growth and development and which are typically lacking in the diets of the WIC eligible population. The Department has designed the WIC food packages based on nutritional research and input from various sources, including State and local agencies, the health and scientific communities, industry and the general public.

WIC Food Package History

Food package requirements appear in 7 CFR 246.10 of the WIC Program regulations. The Department created six different monthly packages in a 1980 rulemaking (45 FR 74854 (1980)): One for infants 0-3 months; one for infants 4-12 months; one for children and women with special dietary needs; one for children 1-5 years of age; one for pregnant and breastfeeding women; and one for nonbreastfeeding postpartum women. These packages were designed to help accomplish the following: Meet participants' needs and to follow current medical and nutritional guidance; complement the eating patterns of preschool children; and, address the special requirements of pregnant and breastfeeding women. As described in the 1980 final rule (45 FR 74854), the food packages were initially designed and adopted with five considerations in mind. These considerations were also used in guiding decisions concerning the crafting of Food Package VII. These five factors are discussed below, with

particular emphasis on how they apply to Food Package VII.

1. Nutritional Integrity

Great consideration was given to the provision of foods that are rich sources of the nutrients that tend to be lacking in the diets of the WIC eligible population. The original legislation for the WIC Program, the Child Nutrition Act of 1966, as amended by the 1972 School Lunch Program-Summer Food Service Act (Pub. L. 92-433), specifically identified protein, iron, calcium and vitamins A and C as the target nutrients for WIC participants. However, subsequent legislation in 1975 (Pub. L. 94-105) and 1978 (Pub. L. 95-627) deleted the references to specific target nutrients and instead directed the Department to prescribe appropriate nutrients. The Department, consistent with this legislation, determined in October of 1978 that the original five target nutrients continued to be lacking among the WIC eligible population. The Department made this determination through an ongoing examination of nutritional research and with the assistance of State and regional representatives, representatives of industry, the nutrition community, advocacy groups, and program participants.

Section 123(c) of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) required the Secretary to conduct a review of the appropriateness of foods eligible for purchase by WIC participants. The legislation specifically directed the Secretary to consider the nutrient density of such foods and how effectively nutrients for which WIC participants are most vulnerable to deficiencies are provided to participants. The findings from this review were published in November 1991—Technical Papers—Review of WIC Food Packages, USDA/FNS. The researchers concluded, based on a review of the scientific literature on the dietary adequacy of women and children in the United States and associated nutritional/health outcomes, that three nutrients may, in addition to the current five target nutrients, be of concern for WIC's vulnerable target group. These nutrients are folate, vitamin B-6 and zinc. In consideration of these findings, in its 1992 report to Congress, the National Advisory Council on Maternal, Infant, and Fetal Nutrition recommended that WIC nutrition education focus on information to assist participants in selecting foods that supply these three nutrients, with special emphasis on zinc which is not

adequately supplied in the diet generally consumed by the overall United States population. The Department concurs and strongly encourages State agencies to promote the consumption of these three nutrients, as well the current five target nutrients, through nutrition education provided to WIC participants.

Given the supplemental nature of the WIC Program, the food packages are not intended to supply 100 percent of the Recommended Dietary Allowances (RDAs) of each target nutrient, nor are they intended to meet any pre-established goals for RDAs. As mentioned previously, participants are expected to obtain the remainder of the nutrients from other food sources. These, in some cases, could include foods provided through the Department's other food assistance programs. However, the food packages do provide categories of foods which are high in one or more of the five targeted nutrients and are capable of providing a substantial portion, and in some instances the entire amount, of the RDAs for these five targeted nutrients.

2. Fat, Sugar, and Salt Content

The fat, sugar and salt content of foods in the WIC food packages is a consideration which is required by statute. Section 17(f)(12) of the CNA, among other provisions, directs the Secretary to assure that, to the extent possible, the fat, sugar and salt content of WIC foods is appropriate. Several changes made to the WIC food packages in the 1980 rulemaking responded specifically to this mandate. For example, the Department established a limit on the amount of sugar allowable in WIC cereals.

Additionally, FNS policy guidance permits WIC State agencies to issue lowfat, low cholesterol and low sodium forms of WIC cheeses to participants. The Department encourages local program administrators to tailor the WIC food packages to meet the individual nutritional needs of participants and, when appropriate, to adjust the types of WIC foods prescribed to help reduce the amount of fat, cholesterol, sodium and sugar the WIC food packages contribute to the diet. Through WIC nutrition education, participants also receive advice on how to further minimize intakes of fat, cholesterol, sodium and sugar and how to include adequate amounts of vegetables, fruits and whole grain products in their diets.

3. Cost

Aside from considerations which are specified in legislation, a prime consideration in the design of the WIC

food packages was cost. The Department is committed to serving as many eligible persons as possible while maintaining the nutritional integrity of the program. WIC is not an entitlement program, and the number of potentially eligible individuals who can be served is determined by the amount of funds appropriated by Congress. Therefore, efficiency in providing nutrients is important because increases in the total cost of the food packages reduce the number of participants served by the program. The packages are designed to encourage further cost control by permitting State and local agencies the flexibility to specify lower cost food brands, types and container sizes within regulatory parameters.

4. Practicality

All WIC food packages are designed to address a number of practical considerations which reflect participant and program needs. For example, the WIC foods in Food Package VII are readily available, offer variety and versatility to participants, are relatively nutrient dense, and have broad appeal. Additionally, all WIC food packages, including Food Package VII, are individual food prescriptions which, in order to have full effect in improving nutritional status, are intended to be consumed by the participant only and not other family members.

Further, foods offered in Food Package VII are generally types of foods that are of domestic origin and which have undergone minimal processing. The WIC Program, along with other food assistance programs administered by the Department, participates in a longstanding partnership with American agriculture and endeavors to provide foods which support the nation's farming industry.

Lastly, Food Package VII, as well as all WIC food packages, was designed to be administratively manageable for State and local agencies and food vendors.

5. Food Package Flexibility and Meeting Participants' Special Needs

The quantities of foods provided by WIC food packages and participants' cultural eating patterns were significant considerations in the design of the food packages. State and local agencies can tailor the quantities of foods provided by the food packages to better meet participants' special needs. Additionally, they are permitted flexibility in designing their food packages within the parameters of Program regulations. The quantities in all WIC food packages are expressed as maximum levels which must be made

available to participants as needed to supplement their diets. However, State and local agencies have the authority to tailor quantities according to the needs of individual participants or categories of participants when based on a sound nutritional rationale. These tailoring provisions, established in Program regulations (§ 246.10) and supplemented by FNS Instruction 804-1 "WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring," are designed to permit State and local agencies to implement their own nutrition policies and philosophies within the parameters of food package requirements. Section 17(b)(14) of the CNA and § 246.10(e) of the WIC Program regulations also give the Department the authority to approve substitution of foods by State agencies to allow for different cultural eating patterns under certain circumstances. State agencies, however, must demonstrate that the substitute foods are nutritionally equivalent to those in the food package established by the Department.

Current WIC food packages are sufficiently flexible to meet the special needs of homeless persons in most instances. WIC State agencies have devised creative ways to accommodate homeless WIC participants within the framework of the existing WIC food package requirements. For example, some States provide WIC foods such as juice, cereal, cheese, and milk in smaller package sizes and issue more food instruments, each for a smaller part of the total food package. This is so the homeless can acquire WIC foods in smaller quantities and self-serving packages, thus reducing the need for conventional storage facilities.

Food Package VII—The Enhanced Breastfeeding Food Package

As stated previously in this final rulemaking, Food Package VII is designed for those breastfeeding women who elect not to receive infant formula through WIC for their infants and thus are exclusive of all infant formula provided by WIC. The current types and quantities of supplemental foods are retained in Food Package V for pregnant women and for women who are supplementing breastfeeding with any amount of infant formula provided by WIC.

Food Package VII contains the same supplemental foods as are currently provided to breastfeeding women in Food Package V, but with augmented amounts of juice, cheese and legumes (beans, peas and peanut butter), and

with the addition of two new items: carrots and canned tuna.

The selection of foods included in Food Package VII and their amounts were based on the rationale provided by the commenters on the Notice of Intent to Propose Rulemaking and Solicitation of Comments published December 2, 1991 (56 FR 61185) and the subsequent proposed rule published March 19, 1992 (57 FR 9505). In accordance with many comments in support of Food Package VII and with serious regard to the five principles of food package design enumerated previously in this preamble, this final rule, and consequently the foods selected for inclusion in Food Package VII, strongly support the provision of foods which are recognized as being a relatively good source of the nutrients most likely to be lacking in the diets of WIC breastfeeding women.

During the public comment period for the proposed Food Package VII rule, 161 comment letters were received. Some commenters neither supported nor opposed this initiative, but simply expressed concerns on various aspects of the proposed food package. Others supported the initiative, and also expressed assorted concerns on various issues. Of those commenters who did express a definite opinion in support or opposition, the majority (131) strongly supported the enhanced breastfeeding food package as presented in the proposed rule. Twenty-three commenters opposed the proposed enhanced breastfeeding food package.

Commenters in support of an enhanced breastfeeding food package consistently expressed concern about the special health and/or nutritional needs of the lactating woman. The majority to these commenters (73) referred to one or more nutrients or vitamins as being critical to the health/nutritional status of the breastfeeding woman. For example, many commenters referred to increased nutrient and caloric needs of breastfeeding women, particularly those who exclusively breastfeed. Thirty-nine also believed that this initiative is a meaningful step for the Department to take to encourage, support, and promote breastfeeding in the WIC Program.

The majority of commenters suggested 6-12 months as the time needed for State Agencies to implement Food Package VII. As noted in the Effective Date section of this preamble, State agencies have one year from the publication of this final rule to implement Food Package VII. Most commenters believed that a year would provide sufficient time for agencies to make the appropriate administrative

and program adjustments necessary to implement the food package.

a. Juice

The Department proposed that the allowable maximum quantity of juice in Food Package VII be 322 fluid ounces of single strength fruit or vegetable juice (or a combination of both) or 336 fluid ounces of reconstituted frozen concentrated fruit or vegetable juice (or a combination of both). The majority of commenters supported these proposed amounts of juice. Commenters believed that juice has good nutrient qualities. Additionally, since juice is already offered in some WIC food packages as an allowable food, commenters believed that it has proven participant acceptance and administrative feasibility.

Three commenters opposed the proposed amount of juice and believed that the amount currently offered in Food Package V (276 fluid ounces of single strength or 288 fluid ounces of reconstituted frozen concentrated juice) was sufficient for Food Package VII.

The Department concurs with the majority opinion of commenters on this issue. Consequently, as originally proposed, Food Package VII established in this final rule offers a maximum of 322 fluid ounces of single strength fruit or vegetable juice (or a combination of both) or 336 fluid ounces of reconstituted frozen concentrated fruit or vegetable juice (or a combination of both). As proposed, this juice must contain a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted or single strength juice.

b. Cheese

Cheese is currently provided in Food Packages IV, V, and VI only as a substitute for milk. The proposed rule stated that one pound of domestic cheese would be provided in Food Package VII as an independent food item. The majority of commenters on the proposed rule supported this provision and believed that cheese is a good source of target nutrients. Additionally they believed that for those breastfeeding women who may be intolerant of milk, cheese provides a good alternative source of protein and other target nutrients. Four commenters, however, had concerns about the addition of cheese affecting the overall fat content of Food Package VII.

Some cheeses, as well as many other dairy products, could be considered high fat foods. Through nutrition education, however, a participant can learn how to select cheeses and other dairy products that conform more closely to their dietary needs. For example, a

breastfeeding participant receiving Food Package VII, who may need to decrease fat intake, could choose lowfat cheeses and lowfat/skim milk which would help control the overall fat content of her diet.

Program regulations can also influence the types of foods a participant chooses. For example, in § 246.10(b)(1) of the current WIC regulations, State agencies are responsible for determining the brands and types of WIC foods authorized for use in their States from among those foods authorized in federal regulations, including cheese. State agency decisions as to which items to include may be influenced by factors such as food prices, product distribution within a State, WIC participant acceptance, and costs.

Because cheese is a good source of WIC target nutrients and State agencies have the flexibility to influence the types of foods a participant chooses through nutrition education and the types of foods authorized, as proposed, the Department authorizes up to 1 pound of domestic cheese as an independent food item in Food Package VII.

c. Legumes

The proposed rule would have allowed both one pound of mature dried beans or peas and 18 ounces of peanut butter per month in Food Package VII (as opposed to one pound of mature dried beans or peas or 18 ounces of peanut butter as is currently provided in Food Package V). The majority of commenters believed this proposed change to be administratively feasible because legumes are widely available and relatively low cost. These commenters believed the legumes are nutrient dense and generally a good source of the WIC target nutrients.

However, some commenters suggested that in order to offer more flexibility to State and local agencies, mature dried beans and peas should be offered as a substitute for peanut butter. The Department agrees with these commenters.

As proposed, Food Package VII, as established in this final rule, provides a maximum of both one pound of mature dried beans or peas and 18 ounces of peanut butter per month. In recognition of the comments, in this final rule the Department is allowing mature dried beans and peas to be substituted for peanut butter at the rate of 1 pound of dry beans or peas per 18 ounces of peanut butter. Peanut butter, however, may not be substituted in place of mature dry beans or peas at any rate.

d. Canned Tuna

In the proposed rule up to 26 ounces of canned tuna was included in Food Package VII based on commenters' recommendations on the Notice of Intent to Propose Rulemaking and Solicitation of Comments. These commenters suggested canned tuna due to its wide availability, ease of apportionment, anticipated participant acceptance, ease and versatility in preparation, and nutrient content. Commenters on the proposed rule also strongly supported the inclusion of tuna for the same reasons and also raised some other issues.

The most commonly stated concerns of commenters (17) in regard to the inclusion of canned tuna in Food Package VII were related to environmental issues. For example, commenters were most concerned with the safety of dolphin and regulating the use of dolphin safe nets in the harvesting of tuna. Commenters believed that only tuna which is dolphin safe should be allowed in Food Package VII.

The Department, being sensitive to this issue, researched federal statutory and regulatory safeguards and found extensive controls in existence to protect dolphin. For example, on November 28, 1990, the Fishery Conservation Amendments of 1990 (Pub. L. 101-627, 104 Stat. 4436) were enacted. Title IX of the Amendments, entitled the Dolphin Protection Consumer Information Act, among other things, regulates the use of labels suggesting that tuna is "dolphin safe," defining misuse of such labels as an unfair or deceptive trade practice. Consequently, symbols or wording displayed on the label of canned tuna which suggest that the product is dolphin safe indicate that the product was processed according to the conditions delineated in the Dolphin Protection Consumer Information Act. However, there is no standard dolphin safe symbol which is used by all manufacturers.

On October 26, 1992, the International Dolphin Conservation Act of 1992 (Pub. L. 102-523), which amended the Marine Mammal Protection Act of 1972, was enacted. This Act authorizes the Secretary of State to enter into international agreements to establish a global moratorium to prohibit harvesting of tuna through the use of purse seine nets. Additionally, this law makes it unlawful for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna product that is not dolphin safe.

The Department believes that the existing federal statutory provisions (Pub. L. 102-523 and Pub. L. 101-627) dismiss the need for programmatic restrictions at this time. However, as permitted in § 246.10(b)(1) of WIC Program regulations, State agencies continue to be responsible for determining the brands and types of WIC foods authorized for use in their States from among those foods authorized in Federal regulations. State agencies have the flexibility to limit the foods authorized for use in their States. Consequently, States agencies can limit the type (e.g., dolphin safe) or the brand of canned tuna (e.g., least expensive) allowed in their food packages.

Another environmental issue that commenters were concerned about was the possibility of canned tuna having unsafe levels of mercury (methyl mercury). The Department consulted with the U.S. Food and Drug Administration (FDA) on this issue. FDA advised that very few cases of methyl mercury poisoning have ever occurred, and there has never been an instance of health problems caused by methyl mercury at the levels it appears in canned tuna. Most seafood contains minute amounts of methyl mercury. The mercury level of seafood can be influenced by the size and age of the fish and the area where it was caught. The naturally occurring levels of mercury in deep ocean-dwelling fish, such as tuna, have not changed appreciably in the past 90 years.

FDA regulates canned tuna through spot checks, during which it checks for foreign matter, decomposition, chemicals (e.g., methyl mercury) and microbiological contaminants. FDA then takes action according to whether the product examined is adulterated by foreign matter or if a potential health hazard may exist. FDA may inspect seafood processors, shippers, packers, labelers, and warehouses to ensure maintenance of good manufacturing practices and to monitor the quality of their products; it can have seafood that does not meet standards removed immediately from interstate commerce. Tuna available to WIC participants, therefore, will be subject to the same guarantees of wholesomeness as other seafood consumed in the United States.

The proposed rule stated that Food Package VII would allow up to 26 ounces of canned tuna packed in water only. Many commenters suggested that the Department should allow canned tuna packed in oil as well as water. Commenters believed that offering both water and oil packed tuna would permit

more flexibility for State agencies and participants.

As with all WIC foods allowed by Program regulations, including canned tuna, WIC nutritionists may tailor a food package to meet the specific food needs of individuals, as long as at least one type of food from each group is available to participants. Further, States may entirely preclude the use in their State of certain types of tuna allowed by Federal regulations based on their own nutrition policies as well as cost considerations. Therefore, the Department has decided to provide State agencies with maximum flexibility on this matter and this final rule permits canned tuna packed in water or oil. Under this final rule, a State agency may determine whether both water and oil packed tuna could be available in Food Package VII to WIC participants in their State, based on nutrition policy, cost, or other rationales.

The Department is also clarifying in this final rule that up to 26 ounces of canned tuna provided in Food Package VII may be white, light, dark or blended tuna, including solid and solid pack; chunk, chunks and chunk style; flake and flakes; or grated.

e. Carrots

The proposed rule included up to 2 pounds of raw carrots as allowable in Food Package VII. The selection of carrots for inclusion in the proposed food package was based on their nutrient content, administrative feasibility, availability, recommendations of commenters to the original notice, and broad appeal. Some commenters (17) suggested an additional modification to the proposed Food Package VII be the addition of other vitamin A-rich vegetables and fruits. The rationale offered by commenters was generally to provide more flexibility and allow a greater variety of choices for WIC agencies and participants.

After extensive deliberations, the Department decided that no other vitamin A rich vegetable or fruit surpassed the beneficial qualities of carrots. Further, the Department concurs with commenters who believed that carrots are relatively low in cost, nutrient dense, administratively feasible, widely available in various forms, and have broad appeal to program participants. Consequently, this final rule provides that Food Package VII includes up to 2 pounds of raw carrots. As in the proposed rule, raw carrots may be substituted with frozen carrots at a pound for pound rate or with canned carrots at a rate of one 12-20 ounce can per 1 pound of raw carrots.

The carrots must be raw, canned, or frozen carrots containing only the mature root of the carrot plant packed in water.

Other Issues

a. Cost

Some commenters (5) also expressed concern about the cost of Food Package VII to the WIC Program. These commenters were concerned that Food Package VII would increase food costs to the Program and subsequently adversely affect participation rates. However, the Department believes that since Food Package VII is available to only breastfeeding women whose infants do not receive formula from the WIC Program, a portion of the potential increase in food cost will be offset by the overall reduction in the amount of formula to be purchased by the Program.

The Department's goal in developing Food Package VII is to compose a package that would be as cost neutral as possible and thus, have minimal effect on overall WIC costs and participation levels. USDA estimates that the cost of Food Package VII is approximately equivalent to WIC's net cost to provide monthly food packages to both a mother and her infant receiving the maximum amount of formula.

The foods selected for inclusion were carefully reviewed and analyzed in terms of their cost to the program, their cost relative to the other food packages and how the cost of the food package could affect program participation. The amounts of the foods included in Food Package VII were consequently guided by this analysis. Additionally, the Department continues to be committed to serving the largest number of eligible persons with the funds available for the Program and realizes that a major increase in the total cost of the food packages could affect the number of participants the Program serves. For this reason, the foods in Food Package VII are relatively low in cost and will have a minimal cost impact.

b. Breastfeeding Aids

A number of commenters (15) believed that breastpumps and/or breastfeeding aids should be made available through Food Package VII as an allowable food cost. These commenters believed that breastfeeding aids are a critical component of any breastfeeding promotion and support initiative.

Section 246.14(b) of the WIC regulations allows food funds to be spent on food and warehouse facilities costs only. The purchase of non-food items is not allowed because the

Department believes that food funds should be carefully preserved for the purposes of maximizing participation. Therefore, breastfeeding aids are not an allowable WIC Program food cost.

The Department would like to point out, however, that a section, 123(a)(6), of the Child Nutrition and WIC Reauthorization Act of 1989, Public Law 101-147, added section 17(h)(4)(B) to the CNA, which mandates that the Secretary authorize the purchase of breastfeeding aids by WIC State and local agencies as an allowable expense under nutrition services and administration. A proposed regulation to implement this provision was issued on July 9, 1990 (55 FR 28033). Consequently, since Fiscal Year 1990 State agencies have had the authority to use WIC nutrition services and administration funds for the purchase of breastfeeding aids. On January 17, 1991, the Department issued a policy memorandum which provided State and local agencies with guidance on the use of WIC nutrition services and administrative funds for the purchase of breastfeeding aids.

Breastfeeding aids include, but are not limited to, devices such as breast pumps, breastshells, and nursing supplementers. All of these items directly support the initiation and/or continuation of breastfeeding.

c. Definition of Breastfeeding

Some commenters (7) requested that the Department establish a more clear definition of breastfeeding. Section 123(a)(6) of Public Law 101-147 added a new section 17(h)(4)(A) to the CNA to require the Secretary in consultation with the Secretary of Health and Human Services, to develop a definition of "breastfeeding" for the purposes of the WIC Program. The Committee on Breastfeeding Promotion of the National Association of WIC Directors (NAWD), along with other experts on breastfeeding and representatives from USDA and the Maternal and Child Health Bureau in the Department of Health and Human Services (DHHS), was asked by the Department to provide input on developing a national definition of breastfeeding. The NAWD Committee has recommended that "breastfeeding" be defined as the provision of mother's milk to her infant on the average of at least once a day. Both the Department and DHHS have concurred with this recommended definition for WIC Program purposes. This information has been shared with WIC State agencies and the definition will soon be finalized in a separate rulemaking. States are permitted and encouraged to adopt this definition prior to the issuance of the

forthcoming final regulation expected early in 1993.

Except as may otherwise be specified, this definition will be consistently applied to all aspects of the WIC Program, including the evaluation of promotional efforts and the determination of categorical eligibility as a breastfeeding woman. The definition recommended by the NAWD Committee conforms to the Healthy People 2000—National Health Promotion and Disease Prevention Objectives established by the Administration. This definition also recognizes that any breastfeeding, even if only on an average of once a day, provides some immunological and nutritional benefits which would otherwise not be provided to an infant. In addition, there are significant psychological benefits of breastfeeding to both mother and infant. Breastfeeding plays a critical role in the transition to motherhood and the formation of strong bonds between the mother and her infant.

As stated previously, this definition will consistently apply to all aspects of the WIC Program, including the determination of categorical eligibility as a breastfeeding woman. In the context of this regulation, this means that mothers who are breastfeeding on an average of at least once a day, and not receiving formula from the WIC Program, would be eligible to receive Food Package VII as a breastfeeding woman.

d. Evaluation Component

Seven commenters were concerned about measuring the effects of this food package initiative. Some suggested that focus group testing be done at some point, but most did not refer to a particular type of evaluation of the effects of Food Package VII. It is the Department's desire to strongly support any and all State agency efforts to evaluate this food package or other components of the WIC Program. Regardless, it is not the intent of this final rule to create the burden of routine State evaluations of Food Package VII for breastfeeding women. For this reason this final rule does not mandate an evaluation component. However, the Department may explore the use of this food package as a component of the upcoming WIC Nutrition Education Assessment Study.

The Department continues to be committed to providing support to agencies for evaluation of the effects of this food package as well as others. Further, State agencies are free to evaluate the effects of this food package within their own jurisdiction. The

Department recognizes that many types of program evaluation can be labor intensive and administratively demanding. Additionally, the Department appreciates and recognizes the many evaluation efforts previously undertaken by State agencies. The Department would also greatly appreciate learning of any efforts in this regard and the findings.

e. Other Suggested Modifications

A wide range of other modifications were suggested by commenters including various non-food items. For example, some commenters suggested for inclusion in Food Package VII the following: U.S. Savings Bonds for children and/or infants; gift certificates to local restaurants; gas for transportation; money for child care; diapers; vitamin supplements; cash rebates for breastfeeding; and others. According to WIC Program regulations at § 246.14(b), (c), and (d), these items are not allowable and the Department considers them inappropriate for inclusion as allowable food or administrative costs in Food Package VII or any of the WIC food packages. Additional food items suggested by commenters were dry instant soup mix and dried codfish. After consideration, the Department declined to include these food items in Food Package VII.

Standard Food Package Policy

As permitted in § 246.10(b)(1) of the WIC regulations, State agencies continue to be responsible for determining the brands and types of WIC foods authorized for use in their States from among those foods authorized in Federal regulations. The decision may be influenced by a number of factors such as cost, product distribution within a State, and WIC participant acceptance.

State agencies have the flexibility to limit the number of foods authorized for use in their States. They are not obligated to authorize every available food that meets Federal requirements. Pursuant to § 246.10(b)(2)(i), however, they are obligated to ensure that local agencies make available at least one food from each group in each food package, including Food Package VII for breastfeeding women presented in this final rule. This includes all the categories of foods listed in Food Package VII: Milk, cheese, eggs, cereal, juice, legumes, fish, and vegetable. Additionally, the State can limit the type (e.g. fresh, canned or frozen) or the brand (e.g. the least expensive). As stated previously in this preamble, a State agency may determine whether both water and oil packed tuna could be

available in Food Package VII to VIC participants in their State, based on nutrition policy, cost, or other rationales.

Food Package VII Graph

An analysis of Food Packages V and VII is provided as the appendix II to this preamble. This chart compares two hypothetical food packages for breastfeeding women in the first six months of lactation. Food Package V for breastfeeding women is indicated in the chart as "BF (Basic)." This is a new title for the food package, and is the only change made to Food Package V in this final rulemaking. Food Package VII for breastfeeding women whose infants do not receive formula from the WIC program is indicated as "BF (Enhanced)." The percent RDAs for both food packages are for breastfeeding women during the first six months of lactation. This analysis is based on maximum amounts of foods allowed in the food packages.

Appendix I—The Department's Support of Breastfeeding

Current Federal Requirements

Current Federal requirements for the WIC Program include various provisions to encourage participating women to breastfeed their infants. For example: The current WIC food package for breastfeeding participants (Food Package V) provides a greater variety and quantity of food than that for nonbreastfeeding postpartum participants (Food Package VI); breastfeeding women are always considered to be at a higher level of nutritional risk than nonbreastfeeding postpartum women (a nutritional risk priority system is used to determine position on the waiting list when a local agency has reached maximum caseload, and those persons in the highest priorities are served first); information on the benefits of breastfeeding must be included in WIC nutrition education sessions; WIC breastfeeding women may receive program benefits for up to 1 year while nonbreastfeeding participants are eligible for only 6 months postpartum; funding initiatives are made available to WIC State agencies serving large proportions of high risk persons, which include breastfeeding women and their breastfed infants; and a breastfeeding woman with no nutritional risk of her own may receive program benefits based on the eligibility of her at-risk breastfed infant. Furthermore, the WIC Program provides funding incentives to WIC State agencies to support and promote breastfeeding initiatives in WIC.

Section 123(a)(6) of the Child Nutrition WIC Reauthorization Act of 1989 (Pub. L. 101-147) amended section 17(h) of the CNA to require the Department to promote breastfeeding among WIC participants by: (1) Establishing, in consultation with the Secretary of Health and Human Services, a standard definition for the term "breastfeeding"; (2) establishing breastfeeding promotion and support standards for State and local agencies; and (3) authorizing the purchase of breastfeeding aids by State and local agencies as an allowable administrative cost. A proposed rule to implement these legislative provisions was published on July 9, 1990 (55 FR 28033). A final rule is expected by early 1993. In addition, Public Law 101-147 requires each State agency to annually spend an amount equal to its share of the \$8,000,000 specifically distributed by the Department for breastfeeding promotion and support. This provision became effective October 1, 1989.

Initiatives

The Department also encourages the promotion of breastfeeding in the WIC Program through a number of activities, including the following:

1. The Department funds a variety of breastfeeding projects, including grants to WIC State and local agencies and a study to demonstrate and evaluate effective breastfeeding promotion approaches in the WIC program. The study's final report, entitled WIC Breastfeeding Promotion Study and Demonstration—Phase IV Report Volume I, showed that interventions improved breastfeeding rates among WIC participants. Currently, eight local WIC agencies have received approximately \$100,000 in grants to study the effectiveness of using locally donated tokens and gifts as incentives to promote breastfeeding. Results from this study are expected to be available in the Summer of 1993.

2. The Department developed publications on breastfeeding for participants and technical assistance materials to give WIC State and local agency staff ideas on how to better promote breastfeeding. Some of the more recent publications are: *Promoting Breastfeeding in WIC: A Compendium of Practical Approaches* and *WIC Breastfeeding Promotion Study and Demonstration Report* (for agency staff), and *How WIC Helps—Eating for You and Your Baby and Pregnant? Drugs and Alcohol Can Hurt Your Unborn Baby* (for participants).

3. The Department has participated in numerous cooperative efforts with other Federal agencies and private

organizations to promote breastfeeding. Examples include:

(1) The Department cooperated with the Department of Health and Human Services in sponsoring conferences to train health care providers and local agency staff in lactation management;

(2) The Department is active in the Healthy Mothers, Healthy Babies Coalition Breastfeeding Promotion Subcommittee; and

(3) The Department is working with UNICEF on its Baby Friendly Hospital Initiative, which would further support hospital breastfeeding initiation.

4. The Department hosts ongoing semi-annual meetings of the Breastfeeding Promotion Consortium to exchange information on how government and private health interests, including major health professional and non-profit organizations, can work together to promote breastfeeding.

5. As a result of information gained at the Breastfeeding Promotion Consortium meetings, the Department discerned a need to develop a national media campaign to promote the concept that breastfeeding is the optimum choice for infant feeding for both mother and baby. The Department is developing plans for such a comprehensive media campaign. Legislation entitled the Child Nutrition Amendments of 1992 (Pub. L. 102-342), signed into law August 14, 1992 added a new section 21 to the CNA which establishes a breastfeeding promotion initiative. This new provision authorizes the Secretary of Agriculture to utilize private funding and in-kind contributions from the private sector to conduct a national campaign and educational program to promote breastfeeding.

6. The Department cooperated with the National Association of WIC Directors to develop and distribute voluntary guidelines for use by WIC State agencies in promoting and supporting breastfeeding in the WIC Program.

7. Pursuant to the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) the Department issued Program guidance on allowable breastfeeding aids and has authorized the use of WIC administrative funds to purchase breastfeeding aids such as: breast pumps, breastshells, and nursing supplementers. These allowable aids directly support the initiation and continuation of breastfeeding.

8. The Department contracted for a detailed analysis of breastfeeding rates and patterns of WIC mothers and eligible, non-WIC mothers using data from the National Maternal and Infant Health Survey.

Appendix II

The amounts of foods selected for the following analyses are based on the maximum quantities of supplemental foods authorized per month for Food Package V and Food Package VII. These are sample food packages, and the types of foods chosen do not necessarily represent the most frequently prescribed or selected WIC foods. The mean nutritional values were calculated from these sample food packages; the percent RDAs displayed in the following chart labeled "Chart 1." are based on these means.

Table 1. lists the specific foods and their amount for both Food Packages V and VII. Table 2. lists the percent RDAs for select nutrients of the foods allowed in Food Package V and VII. For the convenience of State and local agencies these percent RDAs are also graphically displayed in Chart 1.

Chart 1. compares two hypothetical food packages for breastfeeding women in the first six months of lactation. Food Package V for breastfeeding women is indicated in the chart as "BF (Basic)." Food Package VII for breastfeeding women whose infants do not receive formula from the WIC program is indicated as "BF (Enhanced)."

TABLE 1

Food package V— Pregnant and breastfeeding women (basic)		Food package VII— Breastfeeding women (enhanced)	
Food	Amount	Food	Amount
Milk (2% lowfat).	28 qts.....	Milk (2% lowfat).	28 qts.
Cheese (cheddar).	0.....	Cheese (cheddar).	1 lb.
Eggs (fresh, raw).	2 doz.	Eggs (fresh, raw).	2 doz.
Cereal (Kix, RTE).	36 oz.	Cereal (Kix, RTE).	36 oz.
Juice (orange).	288 oz.	Juice (orange).	336 oz.
Legumes:	Leg-umes:		
Red kidney, dry.	1 lb.	Red kidney, dry.	1 lb.
Peanut butter.....	0.....	Peanut butter.....	18 oz.
Canned Tuna (water).	0.....	Canned Tuna (water).	26 oz.
Carrots (canned).	0.....	Carrots (canned).	32 oz.

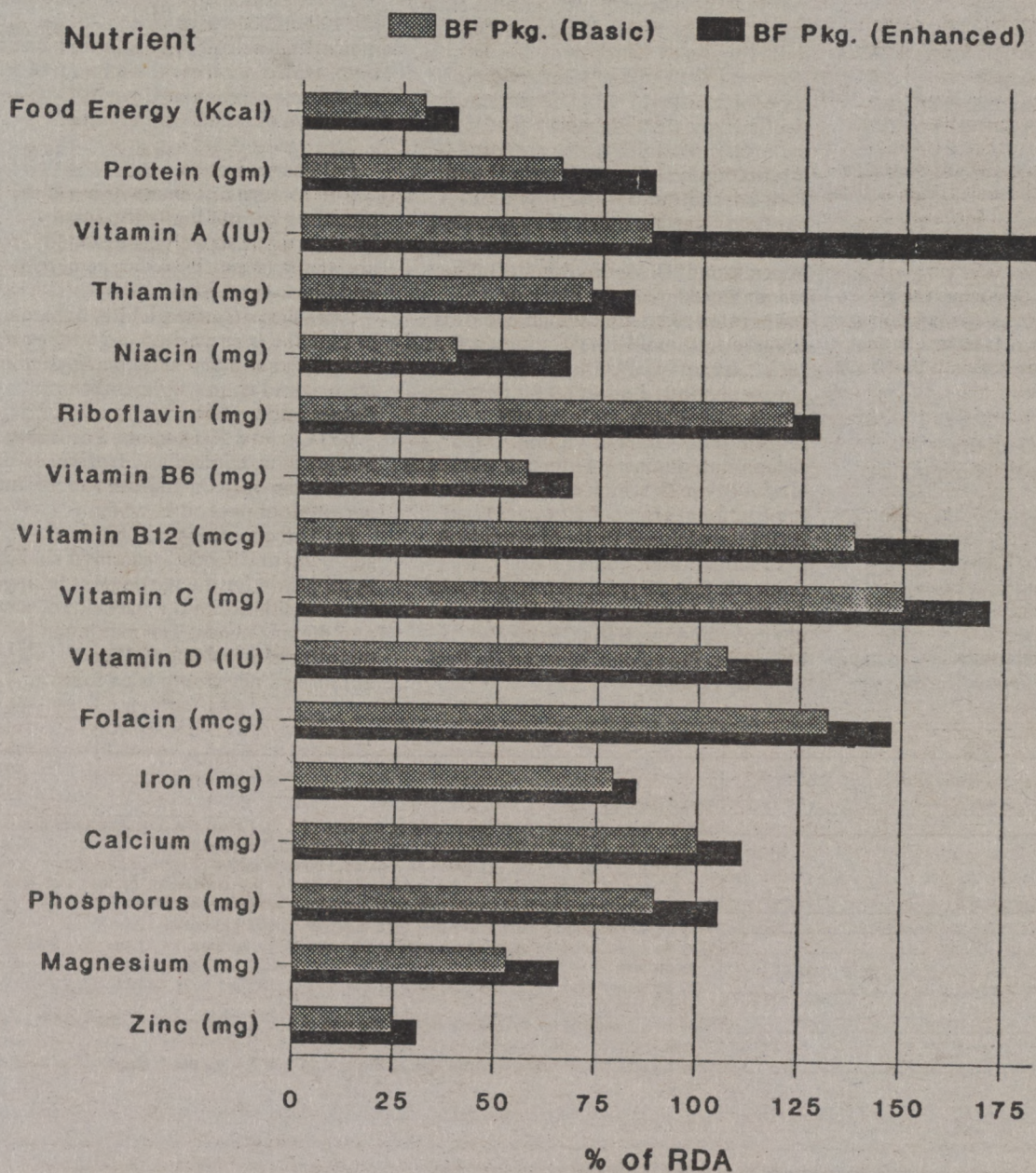
TABLE 2

Nutrient	Percent RDA	
	Food package V (percent)	Food package VII (percent)
Food energy (Kcal).....	30.2	38.3
Protein.....	64.3	87.6
Vitamin A.....	86.8	182.2
Thiamin.....	72.1	82.7
Niacin.....	38.7	67.0
Riboflavin.....	122.3	128.7
Vitamin B6.....	56.8	67.8
Vitamin B12.....	137.8	163.1
Vitamin C.....	150.1	171.2
Vitamin D.....	106.8	122.7
Folacin.....	131.8	147.3
Iron.....	78.9	84.7
Calcium.....	100	110.8
Phosphorus.....	89.3	105.2
Magnesium.....	52.9	66.0
Zinc.....	24.8	30.9

BILLING CODE 3410-30-M

Chart 1.

Daily % of RDA in Fd. Pkgs. V and VII Breastfeeding Women <6 months lactation



Source: USDA/FNS

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and Child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:

Authority: Secs. 123 and 213, Pub. L. 101-147, 103 Stat. 877 (42 U.S.C. 1786); sec. 3201, Pub. L. 100-690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100-460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100-435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100-356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8-12, Pub. L. 100-237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 341-353, Pub. L. 99-500 and 99-591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97-35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96-499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 95-627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.10:

a. The first sentence of the introductory text in paragraph (c) is revised;

b. The heading of paragraph (c)(5) is revised; and

c. A new paragraph (c)(7) is added. The revisions and addition read as follows:

§ 246.10 Supplemental foods.

* * * * *

(c) *Food packages.* There are seven food packages available under the Program which may be provided to participants. * * *

(5) *Food Package V—Pregnant and Breastfeeding Women (Basic).* * * *

(7) *Food Package VII—Breastfeeding Women (Enhanced).* (i) Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of Vitamin D per quart (.9 liter) or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skim milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(ii) Domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

(iii) Adult cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(iv) Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(v) Eggs or dried egg mix.

(vi) Peanut butter.

(vii) Mature dry beans or peas, including but not limited to lentils, black, navy, kidney, garbanzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

(viii) Tuna: Canned white, light, dark or blended tuna packed in water or oil, including solid and solid pack; chunk, chunks and chunk style; flake and flakes; and grated.

(ix) Carrots: Raw, canned or frozen. Mature raw; canned and frozen carrots containing only the mature root of the carrot plant packed in water.

(x) The quantities and types of supplemental foods prescribed shall be appropriate for the participant taking into consideration the participant's age and dietary needs. The maximum quantity of supplemental foods authorized per month is as follows:

Food	Quantity
Milk:	
Fluid whole milk or	28 qt. (26.5 L).
Cheese or	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted. Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.
Fluid skim or lowfat milk or	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
Cultured buttermilk or	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
Evaporated whole milk or	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
Evaporated skimmed milk or	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
Dry whole milk or	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
Cheese:	
Cheese	1 lb. (.4 kg).
Eggs:	
Eggs or	2 doz. or 2½ doz.
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs, or 2 lb. (.9 kg) egg mix per 2½ doz. fresh eggs.
Cereals:	
Cereals (hot or cold)	36 oz. dry (1 kg).
Juice:	
Single strength juice or	322 fluid oz. (9.6 L).

Food	Quantity
Frozen concentrated juice	336 fluid oz. reconstituted (10.0 L). Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.
Legumes:	
Dry beans or peas and	1 lb. (.4 kg). May be substituted for peanut butter at the rate of 1 lb. of dry beans or peas per 18 oz. of peanut butter.
Peanut butter	18 oz. (.5 kg). Peanut butter may not be substituted for mature dry beans or peas at any rate.
Fish:	
Tuna	26 oz. (.8 kg).
Vegetable:	
Raw carrots or	2 lb. (.9 kg).
Frozen carrots or	May be substituted for fresh at the rate of 1 lb. frozen per 1 lb. fresh.
Canned carrots	May be substituted for fresh at the rate of 1 16-20 ounce can of carrots per 1 lb. fresh.

Dated: November 20, 1992.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 92-28738 Filed 11-25-92; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV-92-029FR]

Establishment of Pit and Pit Fragment Tolerances for Dried Prunes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes pit and pit fragment tolerances for pitted and macerated dried prunes. Currently there is no required tolerance for pit or pit fragments under the marketing order. The Dried Fruit Association (DFA), the inspection agency established under the marketing order, inspects for pits and pit fragments only on handler request based on a 2 percent tolerance established by the Food and Drug Administration (FDA). This action was unanimously recommended by the Prune Marketing Committee (Committee) which is responsible for local administration of the marketing order at its February 11, 1992, meeting. This action establishes that no handler shall ship any lot of pitted prunes for human consumption as pitted prunes unless the pitted prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments, and any lot of pitted macerated prunes for human consumption as pitted macerated prunes unless the macerated prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments. The tolerances will benefit prune producers, handlers, and consumers, and foster continued growth

of the market for pitted and macerated prunes.

EFFECTIVE DATE: November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite, 102B, Fresno, California 93721, telephone (209) 487-5901; or Valerie L. Emmer, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 205-2829.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 993 (7 CFR part 993), both as amended, hereinafter referred to as the "order", regulating the handling of dried prunes produced in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing

the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of prunes who are subject to regulation under the marketing order and approximately 1,400 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This action revises paragraph (f)(1) of § 993.150 of Subpart-Administrative Rules and Regulations (7 CFR 993.101-993.174) and is based on a unanimous recommendation of the Prune Marketing Committee (Committee) and other available information.

Paragraphs (a) and (b) of § 993.50 provide authority for the establishment of more restrictive regulations with respect to prunes that may be shipped or

otherwise disposed of by a handler if such action tends to effectuate the declared policy of the Act. Section 993.150(f)(1) specifies minimum requirements for pitted prunes for human consumption as pitted prunes and for pitted prunes for use and used in prune products for human consumption.

Pitted dried prunes (with their shape maintained) are preferred for snacking by consumers due to their attractive appearance, but are also used for cooking and baking. Such prunes are characterized by a uniform depression and minimal skin break where the pit has been removed (punched-out). Pitted macerated prunes are characterized by a flattened appearance with slightly more skin break where the pit has been removed because the pitting machine used employs rollers to squeeze the pits out. Such prunes are preferred as an ingredient for cooking and baking, where appearance and identity are not important, but can also be used for snacking. Well macerated prunes are pitted prunes which have lost their shape as prunes by being cut/diced into small pieces or by being block pressed into cakes of pitted flesh. Cut/diced prunes generally are used as ingredients for cooking and baking, and block pressed prunes are used in prune products, such as prune butter, prune paste, and puree.

According to the Committee, pitted prunes offer consumers a high quality product and provide the industry with its best opportunity for future growth. California pitted dried prune shipments have increased by 10 percent annually over the last 10 years (91,512 tons in 1990-91 versus 34,314 tons in 1980-81), and currently represent nearly 49 percent of total dried prune shipments. Ten years ago pitted prune shipments represented less than 23 percent of total dried prune shipments.

Currently, the presence of pits and pit fragments in pitted and macerated prunes is not scored as defect when inspecting such prunes under the marketing order. The DFA, the inspection agency under the marketing order for prunes, currently inspects pitted prunes and macerated prunes for pits and pit fragments only on request of the handler. The tolerance imposed is the tolerance implemented by the U.S. Food and Drug Administration as a food defect action level. Pursuant to the FDA requirements, pitted prunes cannot contain more than an average of 2 percent by count with whole pits and/or pit fragments 2 mm or longer, and 4 of 10 subsamples of pitted prunes cannot have more than 2 percent by count with

whole pits and/or pit fragments 2 mm or longer.

The most common consumer complaints received by California prune handlers concern pitted prunes and macerated prunes containing pits and pit fragments. Nearly 2,000 such complaints are received annually, and the industry has information indicating that this figure significantly underestimates the magnitude of the problem. Many consumers finding pits and pit fragments simply discontinue purchasing a brand or all prune brands. Thus, the industry recommended the establishment of a tolerance for pits and pit fragments after pitting, differentiating between pitted prunes, macerated prunes, and well macerated prunes.

Because this appears to be the most likely reason to hinder the continued growth of this important market for dried prunes, the Committee recommended this action pursuant to the authority in paragraphs (a) and (b) of § 993.50. Experience has shown that the machines used to pit prunes for use as pitted prunes occasionally leave prunes with whole pits or large pit fragments, and that the machine used for macerated prunes occasionally leaves prunes with shattered pits.

Because pitted dried prunes are mostly eaten out-of-hand as snacks, there is a greater chance of consumer dental injury due to pits and pit fragments. Consequently, the Committee recommended that no handler shall ship any lot of pitted prunes for human consumption as pitted prunes unless the prunes contain no more than an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and that 4 of 10 subsamples of pitted prunes cannot have more than 0.5 percent by count with whole pits and/or pit fragments 2 mm or longer.

For pitted macerated prunes, the Committee recommended that such prunes contain no more than an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer, and 4 of 10 subsamples of pitted macerated prunes cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. The Committee recommended a more lenient tolerance for macerated prunes because such prunes are used mostly as ingredients in cooking and baking and any pit or pit fragments are more easily noticed by the consumer. The latter tolerance is the same as that implemented by the Food and Drug Administration.

No tolerance was recommended for well macerated prunes because these

prunes are only used in prune products and there is no apparent pit or pit fragment problem. When well macerated prunes are used in manufactured products, any pit fragments are generally so small that they cause no problems.

In order to obtain more information regarding pits and pit fragments, the DFA conducted a study between December, 1991, and January, 1992. The study revealed that 91 percent and 88 percent of the pitted prunes inspected met the 0.5 percent by count tolerance and that 99 percent of macerated prunes inspected met the 2 percent by count tolerance. On the basis of the information, the Committee believes that handlers may experience a slight increase in pitter maintenance and hand sorting costs in order to consistently meet the new tolerances, but that these costs should not disproportionately impact small entities.

The estimated incremental inspection cost for these tests is \$2.50 per ton. This cost was based on 1 sample taken from each 1,000 pounds of prunes in the lot. DFA indicated that the cost could be reduced to \$1.25 per ton, if a 1 sample taken from each 2,000 pounds sampling procedure were adopted, without harming the validity of the inspection results.

The recommended tolerances are expected to ensure a consistently higher quality product for consumers which will benefit all producers and handlers through increased prune sales, higher handler profits, and improved grower returns. The tolerances are equitable because all handlers who market pitted prunes have similar equipment and are capable of meeting the tolerances with other proper equipment maintenance and hand sorting of pitted and macerated prunes. The tolerances apply uniformly to all California pitted prune handlers.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for dried prunes under a domestic marketing order, imported dried prunes must meet the same or comparable requirements. Hence, pit and pit fragment tolerances must be established for imported pitted dried prunes and pitted macerated prunes in section 999.200. The import regulation change has been concurred in by the United States Trade Representative (USTR). An interim final rule, to change the import regulation will be issued as a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant

economic impact on a substantial number of small entities.

A proposed rule concerning this action was published in the **Federal Register** on August 26, 1992 (57 FR 38621). Comments on the proposed rule were invited from interested persons until September 10, 1992. No comments were received.

After consideration of the information and recommendations submitted by the Committee and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) California pitted and macerated prunes are marketed throughout the year and the pit and pit fragment tolerances need to be in effect as soon as possible to be of benefit and encourage further market growth; (2) handlers are aware of this action, which was recommended by the Committee at a public meeting, and need no additional time to comply with the requirements; and (3) no useful purpose would be served by delaying the effective date.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes. Reporting and recordkeeping.

For the reasons set forth in the preamble, 7 CFR part 993 is amended to read as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. In § 993.150, paragraph (f)(1) is redesignated as paragraph (f)(1)(i) and new paragraphs (f)(1)(ii) and (f)(1)(iii) are added to read as follows:

§ 993.150 Disposition of prunes by handlers.

* * * * *

(f) * * *

(1) *For human consumption as such.*
(i) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless the lot, before pitting, met (A) the applicable minimum standard set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes, and (B) the requirements specified in § 993.50 (c) and (d).

(ii) No handler shall ship or otherwise make final disposition of any lot of

pitted prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(ii), pitted prunes means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(iii) No handler shall ship or otherwise make final disposition of any lot of macerated prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(iii), macerated prunes means prunes with the pit removed that are characterized by a flattened appearance with slightly more skin breaks where the pit has been removed than with pitted prunes.

* * * * *

Dated: November 16, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-28286 Filed 11-25-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 999

[Docket No. FV-92-039]

Interim Final Rule Establishing Pit and Pit Fragment Tolerances for Dried Prunes Imported Into the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes pit and pit fragment tolerances for imported pitted and pitted macerated dried prunes. Currently, no tolerance is specified for pits or pit fragments under the import regulation. This rule establishes that no lot of pitted dried prunes, destined for human consumption as pitted prunes, shall be imported if the lot exceeds an average of 0.5 percent by count of prunes with whole pits and/or pit fragments. In addition, no lot of pitted macerated dried prunes, destined for human consumption as pitted macerated prunes, shall be imported if such prunes

exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937 to bring the import requirements for dried prunes into conformity with the requirements of the marketing order for dried prunes produced in California. Pitted and pitted macerated prunes are not subject to size and undersized requirements because such requirements under the order are applied to prunes before pitting and cannot be applied after the pits have been removed.

DATES: This action is effective November 30, 1992. Comments which are received by December 28, 1992, will be considered prior to the issuance of a final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issuance of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Valerie L. Emmer, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 205-2829.

SUPPLEMENTARY INFORMATION: This interim final rule amending the prune import regulation (section 999.200) is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity Marketing Order No. 993, as amended (7 CFR part 993), prescribes grade and size requirements for dried prunes produced in California.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has also been reviewed under Executive Order 12778, Civil Justice Reform. This action is not

intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like prunes. Thus, import regulations should also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms, including importers, are defined as those whose annual receipts are less than \$3,500,000. Currently, pitted and pitted macerated dried prunes are not imported into the United States, and thus, at this time no importers would be affected by the regulations implemented by this action.

Grade and size requirements are included in section 999.200 covering prunes imported into the United States. However, these requirements do not set standards for pitted and pitted macerated dried prunes. This action establishes the requirements specified in Marketing Order No. 993 for California dried prunes as the comparable grade requirements for pitted and pitted macerated dried prunes imported into the United States. This action also does not subject imports of pitted and pitted macerated prunes to the size and undersized requirements specified in M.O. No. 993 because these requirements are applied prior to pitting and cannot be applied after the pits have been removed.

Imported prunes meeting grade and size requirements for such prunes are designated as standard prunes. Imported pitted and pitted macerated dried prunes meeting these grade requirements will be designated as standard pitted or standard pitted macerated dried prunes, as applicable. Prunes failing to meet either of those requirements will be designated as manufacturing grade substandard prunes if the prunes meet the maximum tolerances specified in paragraphs 1, 2, and 3 of Exhibit A of the grade requirements for mold, imbedded dirt, insect infestation, and decay. Manufacturing grade substandard prunes are used for human consumption outlets as prune products. Such prunes lose their form and character as prunes during processing.

This interim final rule modifies paragraphs (a), (b), (c), (e), and (f) of the prune import regulation (7 CFR 999.200). Imported prunes will have to meet the same pit and pit fragment tolerances required of pitted and pitted macerated dried prunes that are specified under M.O. 993. Also, it is necessary to add definitions regarding pitted and pitted macerated dried prunes. Recently, the Department modified the quality requirements under the marketing order for dried prunes produced in California based on a recommendation by the Prune Marketing Committee (Committee). The Committee works with the Department in administering the marketing order program for dried prunes produced in California. Section 8e of the Act requires the import requirements for dried prunes to be in conformity with the requirements of the marketing order for dried prunes produced in California.

Paragraphs (a) and (b) of section 999.200 provide definitions and grade and size requirements for the importation of dried prunes, respectively. This action differentiates pitted and pitted macerated dried prunes imported into the United States and sets pit and pit fragment tolerances for pitted and pitted macerated dried prunes.

Due to their attractive appearance, pitted dried prunes, with their shape maintained, are preferred by consumers for snacking. Such prunes are also used for cooking and baking. Such prunes are characterized by a uniform depression and minimal skin break where the pit has been removed (punched-out).

Pitted macerated dried prunes are characterized by a flattened appearance with slightly more skin break where the pit has been mechanically removed using rollers to squeeze the pits out. Such prunes are preferred as an

ingredient for cooking and baking (appearance and identity are not as important) but can also be used for snacking.

Well macerated prunes are pitted prunes which have lost their shape as prunes by being cut or diced into small pieces or by being block pressed into cakes of pitted prune flesh. Cut or diced prunes generally are used as ingredients for cooking and baking. Block pressed prunes are used in prune products such as prune butter, prune paste, and prune purees.

The most common consumer complaint received by California prune handlers concerns pitted prunes and macerated prunes which contain pits and pit fragments. Nearly 2,000 such complaints are received annually, and the industry believes this figure significantly underestimates the magnitude of the problem. Many consumers who find pits and pit fragments simply discontinue purchasing a brand or all prune brands. Therefore, the Committee recommended establishing tolerances for pits and pit fragments for California prunes regulated under the marketing order. Pursuant to section 8e, the same or comparable requirements must be applied to prune imports. Thus, tolerances are established for pitted and pitted macerated dried prunes.

Prior to changing the requirements under the marketing order, the presence of pits and pit fragments in pitted and pitted macerated dried prunes was not scored as a defect under the marketing order. The Dried Fruit Association (DFA), the inspection agency employed under the marketing order, inspected pitted prunes and pitted macerated prunes for pits and pit fragments only at the request of the handler. The tolerance level used was the level set by the U.S. Food and Drug Administration (FDA) as a food defect action level. Pursuant to FDA requirements (The Food Defect Action Level), pitted prunes cannot contain more than an average of 2 percent by count whole pits and/or pit fragments 2 mm or longer and 4 of 10 subsamples of pitted prune samples cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

The Committee recommended applying the FDA's pitted prune tolerance to California produced pitted macerated prunes because such prunes are used mostly as ingredients in cooking and baking where pit or pit fragments are more easily noticed by the consumer. Thus, lots of California grown pitted macerated dried prunes shall contain no more than 2 percent by count

of prunes with whole pits and/or pit fragments 2 mm or longer and 4 of 10 subsamples of pitted macerated dried prunes shall contain no more than 2 percent by count of whole pits and/or pit fragments 2 mm or longer. This interim final rule applies the same standard to pitted macerated dried prunes imported into the United States.

No tolerance was recommended for well macerated prunes because these prunes are used only in prune products where there is no apparent pit or pit fragment problem. When well macerated prunes are used in manufactured products, pit fragments are generally so small that they are not noticed by consumers and thus, cause no problems.

There will be no size and undersized requirements for pitted and pitted macerated prunes. The size requirements under the marketing order regulations are applied prior to pitting and cannot be applied after the pits are removed. However, lots of pitted and pitted macerated prunes must meet the applicable minimum grade requirements set forth in section 999.200 (exhibit A), except that skin and flesh damage shall not be scored as a defect in determining whether the prunes meet the grade requirements.

Because pitted dried prunes are mostly eaten out-of-hand as snacks, there is a greater chance of consumer dental injury due to pits and pit fragments remaining in the product. Consequently, the Committee recommended establishing a tolerance for California produced pitted dried prunes by requiring that no lot of such prunes, intended for human consumption as pitted prunes, shall be handled unless such prunes contain no more than an average of 0.5 percent by count of prunes with whole pits and/or fragments 2 mm or longer and that 4 of 10 subsamples of pitted prunes contain no more than 0.5 percent by count of whole pits and/or pit fragments 2 mm or longer. This interim final rule applies the same standard to pitted dried prunes imported into the United States.

This action is being taken by the Department so that the prune import requirements will be comparable to those applied to domestic production regulated under the marketing order—as required by section 8e of the Act. While there is no evidence that pitted and pitted macerated dried prunes are imported into the United States, such prunes could be imported in the future.

These tolerances will ensure a consistently higher quality product for consumers, which is expected to benefit importers, when and if they begin importing such prunes. The tolerances

will apply uniformly to all pitted and pitted macerated dried prunes.

Minor conforming changes are also made in the import regulation to update the language and to reflect coverage of pitted and pitted macerated prunes.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the import regulation have been approved previously by the Office of Management and Budget.

After consideration of all relevant matter presented, it is found that the action, as set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action will improve the quality of prunes for importation; (2) a domestic regulation has been recommended and implemented; (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule; and (4) section 8e of the Act requires import requirements for dried prunes to be into conformity with the requirements of the marketing order for dried prunes produced in California.

In accordance with section 8e of the Act, the United States Trade Representative (USTR) has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 999.200 is amended by revising paragraphs (a) and (b); amending paragraph (c)(2)(iv) by adding after the words “for standard prunes” the words “, standard pitted and

standard pitted macerated prunes”; by amending the fourth sentence of paragraph (e)(1) by revising the phrase “paragraph (b)(2)” to read “paragraph (b)(5)”; and revising paragraph (f) to read as follows:

§ 999.200 Regulation governing the importation of prunes.

(a) Definitions.

(1) *Prunes* means and includes all sundried or artificially dehydrated plums, of any type or variety, produced from plums, except: (i) Sulfur-bleached prunes which are produced from yellow varieties of plums and are commonly known as silver plums; and (ii) plums which have not been dried or dehydrated to a point where they are capable of being stored prior to packing, without material deterioration or spoilage unless refrigeration or other artificial means of preservation are used, and so long as they are treated by a process which is in conformity with, or generally similar to, the processes for treatment of plums of that type which have been developed or recommended by the Food Technology Division, College of Agriculture, University of California, for the specialty pack known as “high moisture content prunes”, but this exception shall not apply if and when such plums are dried to the point where they are capable of being stored without material deterioration or spoilage, refrigeration or other artificial means of preservation.

(2) *Pitted prunes* means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(3) *Macerated prunes* means dried prunes with the pit removed that are characterized by a flattened appearance with slightly more skin break where the pit has been removed than with pitted prunes.

(4) *Standard prunes* means any lot of prunes meeting the grade and size requirements prescribed in paragraph (b)(1) of this section.

(5) *Standard pitted prunes* means any lot of pitted prunes meeting the grade requirements prescribed in paragraphs (b)(2) and (b)(3) of this section.

(6) *Standard pitted macerated prunes* means any lot of pitted macerated prunes meeting the grade requirements in paragraphs (b)(2) and (b)(4) of this section.

(7) *Manufacturing grade substandard prunes* means any lot of prunes which meets the grade requirements prescribed in paragraph (b)(5) of this section but fails to meet the requirements for

standard prunes, standard pitted prunes and standard pitted macerated prunes.

(8) *Size* means the number of prunes contained in a pound.

(9) *Person* means any individual, partnership, corporation, association, or other business unit.

(10) *Fruit and Vegetable Division* means the Fruit and Vegetable Division of the Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250.

(11) *USDA inspector* means an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division, or any other duly authorized employee of the USDA.

(12) *Importation* means release from custody of the U.S. Bureau of Customs.

(13) *Undersized prunes* means those prunes that pass freely through a round opening 23/32 of an inch in diameter.

(b) *Grade and size requirements.*

(1) Except as provided in paragraph (b)(5) or paragraph (d) of this section, no person may import any lot of prunes into the United States unless the prunes are inspected and an inspection certificate issued with respect thereto, and the lot meets the applicable grade requirements specified in exhibit A of this section and the average count (i.e., number) of the prunes in such lot is 100 or less per pound. In determining whether any lot conforms to the size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of smallest prunes may not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points.

(2) No person may import any lot of pitted prunes or pitted macerated prunes for human consumption as pitted or pitted macerated prunes unless the lot meets the applicable minimum grade requirements set forth in § 999.200 (exhibit A), except that skin or flesh damage shall not be scored as a defect in determining whether the prunes meet the grade requirements. Pitted and pitted macerated prunes shall not be subject to size and undersized requirements.

(3) No person may import any lot of pitted prunes for human consumption as pitted prunes unless the lot does not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer.

(4) No person may import any lot of pitted macerated prunes for human consumption as pitted macerated prunes unless the lot does not exceed an average of 2 percent by count of prunes

with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

(5) Any person may import any lot of prunes, except any lot containing undersized prunes, pitted prunes or pitted macerated prunes, into the United States for use in human consumption outlets as prune products in which the prunes lose their form and character as prunes by conversion prior to consumption if the prunes are inspected and an inspection certificate issued with respect thereto, and each lot meets the grade requirements set forth in paragraphs (1), (2), and (3) of exhibit A of this section, and the importer first files as a condition of such importation an executed "Prune Form No. 1 Prunes-Section 8e Entry Declaration".

(f) *Reconditioning.* Nothing contained in this section shall preclude the reconditioning of failing lots of prunes, prior to importation, so that such prunes may be made eligible to meet the requirements prescribed pursuant to paragraphs (b)(1) through (5), as applicable, of this section.

Dated: November 16, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-28578 Filed 11-25-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-17-AD; Amendment 39-8313; AD 92-16-04]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the compliance time information for the above-captioned Airworthiness Directive that was published in the *Federal Register* on September 16, 1992 (57 FR 42892). The specific compliance time was inadvertently omitted in the final rule as published. In all other respects, the original document is correct.

DATES: Effective October 21, 1992.

The incorporation by reference of certain publications listed in the

regulations was previously approved by the Director of the Federal Register as of October 21, 1992 (57 FR 42692, September 16, 1992).

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, was published in the *Federal Register* on September 16, 1992 (57 FR 42692). That action was issued to provide alternative methods for accomplishing certain structural modification and replacement requirements that were previously required by AD 89-25-12, Amendment 39-6414 (54 FR 50343, December 6, 1989).

The specific compliance time requirement for AD 92-16-04, as published in the final rule, was inadvertently omitted. The final rule indicated only that the compliance time for accomplishing the required modifications and replacements was "required as indicated;" however, a specific compliance time requirement was not indicated elsewhere in the final rule. In order to ensure that affected airplane operators perform the required modification and replacement actions in a timely manner, this document clarifies that the compliance time is as follows:

"Compliance: Required prior to the accumulation of 10,000 landings, or within the next 300 landings after January 12, 1990 (the effective date of AD 89-25-12, amendment 39-6414), whichever occurs later, unless accomplished previously."

This correct compliance time requirement appeared in the notice that preceded the final rule, as well as in the previously-issued AD.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

Issued in Renton, Washington, on November 19, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-28753 Filed 11-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Docket No. 27054; Amendment No. 71-18]

RIN 2120-AB95

Airspace Reclassification; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations relating to airspace designations to reflect the

approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.7A, Compilation of Regulations. This action also explains how the FAA will amend the listings of Federal airways, area low routes, jet routes and other airspace areas incorporated by reference.

DATES: These regulations are effective November 27, 1992 through September 15, 1993. The incorporation by reference of FAA Order 7400.7A is approved by the Director of the Federal Register November 27, 1992 through September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William Mosley, Air Traffic Rules Branch, (ATP-230), Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9251.

SUPPLEMENTARY INFORMATION:

Background

FAA Order 7400.7 listed the airspace descriptions for all jet routes, area high routes, Federal airways, control areas, control area extensions, area low routes, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in § 71.1 (14 CFR 71.1). The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.7 in § 71.1 effective as of December 17, 1991 through September 15, 1993. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.7 in full text as proposed rule documents in the *Federal Register*. Likewise, all amendments of these listings were published in full text as final rules in the *Federal Register*. This rule reflects the periodic integration of these final rule amendments into a revised edition of the *Compilation of Regulations*, FAA Order 7400.7A. The Director of the Federal Register approved the incorporation by reference of FAA Order 7400.7A in § 71.1 November 27, 1992 through September 15, 1993. This rule also explains how the FAA will amend the airspace designations incorporated by reference in part 71.

The Rule

This action amends part 71 of the Federal Aviation Regulations to reflect the approval by the Director of the

Federal Register of the incorporation by reference of FAA Order 7400.7A. November 27, 1992 through September 15, 1993. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.7A in full text as proposed rule documents in the *Federal Register*. Likewise, all amendments of these listings will be published in full text as final rules in the *Federal Register*. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in § 71.1.

The FAA has determined that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Because this action merely updates references to material incorporated by reference and describes how the FAA will amend the listings contained in FAA Order 7400.7A, the FAA finds that good cause exists, pursuant to 5 U.S.C. 553(d), for making the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 71

Airspace, Airways, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as currently in effect, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all jet routes, area high routes, Federal airways, control areas, control area extensions, area low routes, control zones,

transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace can be found in FAA Order 7400.7A, *Compilation of Regulations*, dated November 2, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.7A is effective November 27, 1992 through September 15, 1993. During the incorporation by reference period, proposed changes to the listings of jet routes, area high routes, Federal airways, control areas, control area extensions, area low routes, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace will be published in full text as proposed rule documents in the *Federal Register*. Amendments to the listings of jet routes, area high routes, Federal airways, control areas, control area extensions, area low routes, control zones, transition areas, terminal control areas, airport radar service areas, positive control areas, reporting points, and other controlled airspace will be published in full text as final rules in the *Federal Register*. Periodically, the final rule amendments will be integrated into a revised edition of the compilation and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.7A may be obtained from the Document Inspection Facility, APA-220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3485. Copies of FAA Order 7400.7A may be inspected in Docket Number 27054 at the Federal Aviation Administration, Office of the Chief Counsel, AGC-10, room 915G, 800 Independence Avenue, SW., Washington, DC weekdays between 8:30 a.m. and 5 p.m., or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This section is effective November 27, 1992 through September 15, 1993.

3. Section 71.11 is revised to read as follows:

§ 71.11 Control zone.

The control zones listed in subpart F of FAA Order 7400.7A (incorporated by reference, see § 71.1) consist of controlled airspace which, unless otherwise specified, extends upward from the surface of the earth and terminates at the base of the continental control area. Unless otherwise specified,

control zones that do not underlie the continental control area have no upper limit. A control zone may include one or more airports and is normally a circular area with extensions as necessary to include instrument approach paths.

4. Section 71.607 is revised to read as follows:

§ 71.607 Jet route descriptions.

Each jet route description can be found in subpart M of FAA Order 7400.7A (incorporated by reference, see § 71.1).

5. Section 71.609 is revised to read as follows:

§ 71.609 Area high route descriptions.

Each area high route description can be found in subpart M of FAA Order 7400.7A (incorporated by reference, see § 71.1).

Issued in Washington, DC, on November 18, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-28572 Filed 11-25-92; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-19105; File No. S7-12-92]

RIN 3235-AF47

Exclusion From the Definition of Investment Company for Structured Financings

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a new rule, rule 3a-7 under the Investment Company Act of 1940 (the "Act"), to exclude issuers that pool income-producing assets and issue securities backed by those assets ("structured financing") from the definition of "investment company." The rule permits structured financings to offer their securities publicly in the United States without registering under the Act and complying with the Act's substantive requirements. Rule 3a-7 removes an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy, including the small business sector.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Rochelle G. Kauffman, Senior Counsel, (202) 272-2038, or Elizabeth R. Krentzman, Attorney, (202) 272-5416,

Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting a new rule, rule 3a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act"). Rule 3a-7 excludes from the definition of "investment company" under section 3(a) of the Act (15 U.S.C. 80a-3(a)) structured financings that meet the rule's conditions. The adoption of rule 3a-7 implements the recommendation made in chapter 1 of the Division of Investment Management's report, *Protecting Investors: A Half Century of Investment Company Regulation*.¹ In addition, the Commission is announcing that it is not pursuing any legislative changes to section 3(c)(5) (15 U.S.C. 80a-3(c)(5)) at this time.

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I. Background

Structured finance is a technique whereby income-producing assets, in most cases, illiquid, are pooled and converted into capital market instruments. In a typical financing, a sponsor transfers a pool of assets to a limited purpose entity, which in turn issues non-redeemable debt obligations or equity securities with debt-like characteristics ("fixed-income securities"). Payment on the securities depends primarily on the cash flows generated by the pooled assets. Issuers that have more assets or that expect to receive more income than needed to make full payment on the fixed-income securities also may sell interests in the residual cash flow.

¹ Division of Investment Management, SEC, *The Treatment of Structured Finance Under the Investment Company Act*, *Protecting Investors: A Half Century of Investment Company Regulation* (1992). The report concluded a two-year examination of the regulation of investment companies and certain other pooled investment vehicles.

A servicer, which often is the sponsor or an affiliate of the sponsor, is the primary administrator of the pool, collecting payments on the underlying assets when due and ensuring that funds are available so that investors are paid in a timely manner. In most cases, an independent trustee, usually a large commercial bank, monitors the issuer's fulfillment of its obligations.

Since its inception in the 1970's, structured finance has grown tremendously, becoming one of the dominant means of capital formation in the United States. Nevertheless, the growth and development of this market has been constrained in some degree by the Act.

Structured financings fall within the definition of investment company under section 3(a), but cannot operate under the Act's requirements.² Many private sector sponsored financings³ have avoided regulation under the Act by relying on section 3(c)(5), which generally excepts from the definition of investment company any person who is not engaged in the business of issuing redeemable securities and who is primarily engaged in one of the finance businesses enumerated in the section. In addition, the Commission has issued more than 125 orders exempting other structured financings, primarily those involving mortgage-related assets, from the Act.⁴ Financings that cannot rely on section 3(c)(5) or obtain an exemption must sell their securities in private placements in reliance on section 3(c)(1),⁵ the "private" investment company exception, or outside the United States.

As a practical matter, the Act treats similar types of structured financings very differently, depending solely on the assets securitized.⁶ Some sectors of the

² For example, the limitations of section 18 on the issuance of senior securities and the prohibitions of section 17 on transactions involving affiliates conflict with the operation of structured financings. 15 U.S.C. 80a-18, -17.

³ Most structured financings sponsored by the federal government and government sponsored enterprises are exempted from the Act under section 2(b), which exempts, among other things, activities of United States Government instrumentalities, or wholly-owned corporations of such instrumentalities. 15 U.S.C. 80a-2(b).

⁴ Structured financings that have received orders may continue to rely on them or may rely on rule 3a-7.

⁵ 15 U.S.C. 80a-3(c)(1).

⁶ For example, most structured financings backed by consumer receivables are excepted from the Act under section 3(c)(5). Structured financings backed by general purpose loans, however, are not excepted and cannot be sold publicly in the United States, even though the financing may be similar to those qualifying for an exception or receiving exemptive relief.

economy, including small business, generally are unable to use structured financings as sources of capital, and many United States investors are denied the opportunity to purchase sound capital market instruments.

On May 29, 1992, the Commission proposed rule 3a-7, which was intended to exclude virtually all structured financings from the definition of investment company, subject to certain conditions.⁷ These conditions generally would have required issuers to (i) issue primarily fixed-income securities, with payment thereon based on the cash flow derived from the pooled assets; (ii) offer to the public only highly rated fixed-income securities; (iii) hold to maturity substantially all of the financing's assets, with limited exceptions; and (iv) deposit assets, cash flows, and other property not needed for the financing's operation in a segregated account maintained by an independent trustee.⁸ The proposed conditions were intended to reflect the structural and operational distinctions between registered investment companies and structured financings and incorporate investor protections currently imposed by the market itself. They also sought to accommodate future innovations in the structured finance market, consistent with investor protection.

II. Discussion

A. Rule 3a-7

The Commission received forty-two comment letters addressing proposed rule 3a-7.⁹ All but two agreed that

structured financings should be excluded from regulation under the Act. Although the commenters generally considered the proposal to be a positive step toward the removal of barriers to the use of structured financings, most argued that it was unnecessarily restrictive and, in some respects, inconsistent with the current operations of many structured financings. The rule, as adopted, has been modified to address the commenters' concerns.¹⁰

1. Scope of the Rule

Rule 3a-7 excludes from the definition of investment company any issuer who is engaged in the business of acquiring and holding eligible assets (and in activities related or incidental thereto) and who does not issue redeemable securities. The rule has been modified from the proposal in several respects to ensure that most structured financings, regardless of their underlying assets, can rely on the exclusion and engage in practices necessary to their operation.¹¹

First, paragraph (b)(1) defines the term "eligible assets" as "financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure servicing or timely distribution of proceeds to the security holders." This definition is based on the definition of "asset-backed security" in the recently adopted revisions to Form S-3 under the Securities Act of 1933 ("Securities Act").¹²

Association ("PSA"); Residential Funding Corp. ("RFC"); Rogers & Wells; Securities Industry Association ("SIA"); Stroock & Stroock & Lavan; Sullivan & Cromwell; Thacher Proffitt & Wood; White & Case; and Wilkie Farr & Gallagher.

¹⁰ In adopting rule 3a-7, the Commission disagrees with the arguments made by the ICI and NASAA that structured financings are investment companies and should be regulated under the Act. See Letter from the ICI to Jonathan G. Katz, Secretary, SEC 4-6 (Aug. 4, 1992), File No. S7-12-92 (hereinafter ICI Comment Letter); Letter from NASAA to Jonathan G. Katz, Secretary, SEC 5 (Aug. 5, 1992), File No. S7-12-92 (hereinafter NASAA Comment Letter). Structured financings are fundamentally different from investment companies in operation and purpose. Notwithstanding its size and rapid growth, the structured finance market has been virtually free of abuse. Requiring regulation based on theoretical concerns would only disrupt an increasingly important form of finance.

¹¹ One commenter suggested the proposed rule be clarified to permit issuers to hold only one eligible asset. Letter from Salomon Brothers to Jonathan G. Katz, Secretary, SEC 11 (Aug. 4, 1992), File No. S7-12-92 (hereinafter Salomon Brothers Comment Letter). Such clarification is unnecessary since the rule as proposed did not exclude this type of structure.

¹² These amendments expanded the benefits of rule 415 under the Securities Act, the so-called shelf registration rule, to offerings of investment grade asset-backed securities. As adopted, Form S-3 defines "asset-backed security" as "a security that is primarily serviced by the cashflows of a discrete

Paragraph (b)(1) replaces proposed paragraph (b)(1), which would have defined eligible assets to mean obligations that have scheduled cash flows, and other assets that serve solely to support the credit of the securities.¹³ Many commenters were concerned that the proposed definition did not encompass all of the types of assets that can be securitized.¹⁴ Commenters also noted that the proposed definition appeared not to include assets commonly used to support the liquidity of the securities and the creditworthiness of the assets being securitized.¹⁵ Finally, many commenters

pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders." See Simplification of Registration Procedures for Primary Securities Offerings, Securities Act Release No. 8964 (Oct. 22, 1992), 57 FR 48970 (Oct. 29, 1992).

¹³ Proposed paragraph (b)(1) defined eligible assets as "obligations that require scheduled cash payments, such as notes, bonds, debentures, evidences of indebtedness, certificates of deposit, leases, installment contracts, interest rate swaps, repurchase agreements, guaranteed investment contracts, accounts receivable, chattel paper, cumulative preferred stock, guarantees, annuities, and participations or beneficial interests in any of the foregoing; and other assets that serve solely to support the credit of the issuer's securities, such as letters of credit, guarantees, and cash collateral accounts."

¹⁴ Some commenters, for example, expressed concern that the proposed requirement of scheduled cash payments would exclude revolving assets (such as credit card accounts receivables, revolving home equity loans, and dealer warehouse receivables) because the cash payments on such assets vary according to current loan balances. See, e.g., Letter from Cadwalader, Wickersham & Taft to Jonathan G. Katz, Secretary, SEC 4-5 (Aug. 3, 1992), File No. S7-12-92 (hereinafter Cadwalader, Wickersham & Taft Comment Letter); Letter from ABA Task Force to Jonathan G. Katz, Secretary, SEC 2 (Aug. 4, 1992), File No. S7-12-92 (hereinafter ABA Task Force Comment Letter). Mortgage pass-through certificates also may not have met the definition since they are equity interests, not obligations, and their payments depend heavily on unscheduled prepayments. Letter from Stroock & Stroock & Lavan to Jonathan G. Katz, Secretary, SEC 4 (Aug. 4, 1992), File No. S7-12-92 (hereinafter Stroock & Stroock & Lavan Comment Letter).

¹⁵ See, e.g., Letter from Mayer, Brown & Platt to Jonathan G. Katz, Secretary, SEC App. 21 (Aug. 3, 1992), File No. S7-12-92 (hereinafter Mayer, Brown & Platt Comment Letter); Letter from Brown & Wood to Jonathan G. Katz, Secretary, SEC 10 (July 20, 1992), File No. S7-12-92 (hereinafter Brown & Wood Comment Letter). For example, liquidity and credit support may be provided through the use of facilities such as asset purchase and secondary marketing arrangements. See Letter from Citibank to Jonathan G. Katz, Secretary, SEC 9 (Aug. 4, 1992), File No. S7-12-92 (hereinafter Citibank Comment Letter). Also, commenters noted that private mortgage insurance, title insurance, and casualty insurance, all of which are frequently used to support the credit of the underlying assets would not have met the proposed definition. See, e.g., Cadwalader, Wickersham & Taft Comment Letter, *supra* note 14, at 6.

⁷ Exclusion from the Definition of Investment Company for Certain Structured Financings, Investment Company Act Release No. 18736 (May 29, 1992), 57 FR 23980 (June 5, 1992) [hereinafter Proposing Release].

⁸ See *id.*, section II.A.2.

⁹ The commenters were Advanta Corp.; the American Bankers Association; the American Bar Association's 1940 Act Structured Finance Task Force ("ABA Task Force"); Brown & Wood; Cadwalader, Wickersham & Taft; Chemical Bank; Chase Manhattan Corp.; Citibank N.A. ("Citibank"); Cleary, Gottlieb, Steen & Hamilton; Cravath, Swaine & Moore, on behalf of Salomon Brothers Inc. ("Salomon Brothers"); Davis Polk & Wardwell; Dean Witter Financial Services Group Inc. ("Dean Witter"); Debevoise & Plimpton, on behalf of The New York Life Insurance Company; Farella, Braun & Martel; Fidelity Management & Research Company ("FMR"); Financial Security Assurance ("FSA"); First Chicago Corp. ("First Chicago"); General Motors Acceptance Corp.; Investment Company Institute ("ICI"); Kirkland & Ellis; Kutak Rock; Latham & Watkins, on behalf of Sears, Roebuck and Co. and Sears Receivables Financing Group, Inc. ("Sears"); Lehman Brothers; Locke Purnell Rain Harrell; Mayer, Brown & Platt; MBNA America Bank N.A. ("MBNA"); Merrill Lynch & Co. ("Merrill Lynch"); Mortgage Bankers Association of America Inc. ("MBA"); NationsBank Corp.; New York State Bar Association; North American Securities Administrators Association, Inc. ("NASAA"); Orrick, Herrington & Sutcliffe; Public Securities

stated that assets that are "ancillary" or "incidental" to eligible assets, such as collateral securing a securitized asset, might not have been eligible assets under the proposed definition.¹⁶ Consequently, they feared that proposed paragraph (b)(1) would have precluded many financings from relying on the rule.

As modified, paragraph (b)(1) encompasses any self-liquidating asset which by its terms converts into one or more cash payments within a finite period of time. Accordingly, virtually all assets that can be securitized (*i.e.*, which produce cash flows of the type that may be statistically analyzed by rating agencies and investors) will meet the definition of eligible asset.¹⁷ In addition, the definition includes credit and liquidity arrangements that support the payment of the securities and the underlying assets, and ancillary or incidental assets which are necessary in the course of servicing the underlying assets or to assure the distribution of cash flow and/or proceeds to security holders.¹⁸

¹⁶ See, e.g., ABA Task Force Comment Letter, *supra* note 14, at 3; Letter from Merrill Lynch to Jonathan G. Katz, Secretary, SEC 9-10 (Aug. 4, 1992), File No. S7-12-92 (hereinafter Merrill Lynch Comment Letter). Other examples of ancillary or incidental assets include proceeds from eligible assets, equity securities received in reorganizations or bankruptcies of obligors on eligible assets, short-term reinvestments, and property obtained upon the lease default of a third-party lessee.

¹⁷ In this regard, one commenter suggested that the Commission adopt the standard used in the proposed amendments to Form S-3 because it more accurately reflected market practices. See Citibank Comment Letter, *supra* note 15, at 2-3. For similar reasons, other commenters suggested that the Commission define "eligible assets" to include "assets that by their terms convert into cash over a finite period of time," borrowing the terminology used in Regulation S under the Securities Act (17 CFR 230 § 903(c)(4)) to define "assets" for that rule's provisions relating to asset-backed securities. See, e.g., ABA Task Force Comment Letter, *supra* note 14, at 2-4; Brown & Wood Comment Letter, *supra* note 15, at 9. One commenter, however, stated that standard, which is used in both Regulation S and Form S-3, still would not reach some assets that can be securitized. See Stroock & Stroock & Lavan Comment Letter, *supra* note 14, at 4-5. Another commenter suggested that the standard was ambiguous. See Mayer, Brown & Platt Comment Letter, *supra* note 15, at App. 18.

Although the definition of eligible assets is intended to be broad, it is impossible to devise a definition of eligible assets that will include *all* types of assets that can be securitized. Accordingly, issuers, or other parties on their behalf, may request the Division of Investment Management take a no-action position with respect to the holding of specified assets that do not meet the definition of "eligible assets," provided such assets meet the intent of the definition.

¹⁸ Thus, for example, although common stock generally would not be an eligible asset because it does not produce cash flows that can be analyzed statistically, issuers could hold common stock, for example, that was involuntarily obtained through a work-out because the common stock would be an ancillary or incidental asset.

Paragraph (b)(1) does not include a list of assets that would meet the definition of eligible assets. The proposed paragraph had included a non-exclusive list of eligible assets to provide guidance to sponsors of financings seeking to rely on the rule. Almost all commenters suggested additional assets for the list,¹⁹ even though some cautioned that the list proposed was so inclusive that it might be interpreted as being exclusive.²⁰ Such an interpretation could cause confusion and ultimately impede the evolution of the structured finance market, thereby outweighing the intended benefits of including a list in the definition. Paragraph (b)(1), as adopted, is intended to include all of the assets provided as examples in the proposed paragraph, in addition to those discussed in connection with the comments received on the proposed provision.²¹

In addition, the rule permits an issuer to engage in activities that are related or incidental to the business of acquiring and holding eligible assets. The release proposing rule 3a-7 ("proposing release")²² had explained that only issuers whose *sole* business is to hold a pool of eligible assets would be able to rely on the rule. A few commenters suggested that this interpretation could preclude current practices, since an issuer's activities during the operation of a financing is not limited to acquiring and holding eligible assets.²³ Accordingly, the rule, as adopted, provides issuers with the flexibility to engage in related or incidental activities.

Finally, the rule retains the proposed requirement that issuers issue only non-redeemable securities. The Commission has decided, however, to delete the reference to debt securities payable upon fourteen days' demand. While precluding issuers from acting in a manner similar to mutual funds, this

¹⁹ These assets included numerous types of financial derivative products, franchise fees, cash, credit-card receivables representing cash advances, insurance policies, reserve funds, liquidity and maturity facilities, and lines of credit.

²⁰ See, e.g., Letter from Cleary, Gottlieb, Steen & Hamilton to Jonathan G. Katz, Secretary, SEC 15 (Aug. 6, 1992), File No. S7-12-92 (hereinafter Cleary, Gottlieb, Steen & Hamilton Comment Letter).

²¹ See *supra* notes 14-16 & 18-19 and accompanying text.

²² Proposing Release, *supra* note 1.

²³ For example, an issuer may engage in such activities as filing registration statements, returning defective assets to the sponsor, and through the servicer as its agent, servicing the assets. See, e.g., Letter from Kirkland & Ellis to Jonathan G. Katz, Secretary, SEC 11 (Aug. 4, 1992), File S7-12-92 (hereinafter Kirkland & Ellis Comment Letter).

approach also codifies industry practice.²⁴

2. Conditions

(i) *Securities based on underlying cash flows.* Paragraph (a)(1) requires the issuer to issue fixed-income securities or other securities that entitle their holders to receive payments that depend primarily on the cash flow from eligible assets. Paragraph (a)(1) differs from the proposal to reflect the inclusion of interest-only ("IO") securities, principal-only ("PO") securities, and "any other securities with similar characteristics" in the definition of "fixed-income securities" in paragraph (b)(2). Proposed rule 3a-7 would have excluded these securities from the definition of fixed-income securities, thereby effectively precluding issuers relying on the rule from selling such securities to the general public. The Commission noted in the proposing release that sales of IO and PO securities to unsophisticated investors may raise suitability concerns, but requested comment on whether this restriction would be appropriate.²⁵

²⁴ Several commenters questioned whether the proposed rule would preclude financings from issuing certain types of securities, or from conducting repurchases in certain specified situations. See, e.g., ABA Task Force Comment Letter, *supra* note 14, at 28-32 (e.g., secondary market "tender option bonds," "Dutch Auction" floater/inverse floater programs); Citibank Comment Letter, *supra* note 15, at 3 (e.g., securities that commence amortization over time at the holder's option). Another commented that the prohibition on issuing redeemable securities would adequately serve to differentiate financings from open-end management investment companies ("mutual funds"), making the restriction on the issuance of short-term demand notes unnecessary. Letter from SIA to Jonathan G. Katz, Secretary, SEC 14 (Aug. 13, 1992), File No. S7-12-92 (hereinafter SIA Comment Letter). Still two other commenters expressed concern that the proposed rule implicitly would permit the issuance of securities with a demand feature of greater than fourteen days, which in turn could promote investor confusion between structured financings and mutual funds and provide opportunities for abuse. Letter from FMR to Jonathan G. Katz, Secretary, SEC 2 (July 31, 1992), File No. S7-12-92 (hereinafter FMR Comment Letter); ICI Comment Letter, *supra* note 10, at 17-19.

Publicly offered financings rarely, if ever, issue redeemable securities. Numerous no-action positions have addressed the definition of redeemable security in the context of section 3(c)(5). See, e.g., California Dentists' Guild Real Estate Mortgage Fund II (pub. avail. Jan. 4, 1990) (a security that may be presented to the issuer by the holder is not a redeemable security if substantial restrictions are placed on the right of redemption). Counsel concerned about whether a security would be a redeemable security under rule 3a-7 may examine these no-action positions for guidance.

²⁵ The Commission also noted that financings that offer IO and PO securities arguably may represent a type of complex capital structure that the Act was intended to address. See Proposing Release, *supra* note 7, at n.74 and accompanying text.

Although a few commenters supported the restriction, most opposed it.²⁶ Opponents argued, among other things, that it would be inappropriate for the Commission to impose suitability requirements in a rule whose purpose is to exclude structured financings from the definition of investment company.²⁷ In addition, they pointed out that the restriction was unnecessary, given the suitability requirements imposed on broker-dealers under the Securities Exchange Act of 1934.²⁸ Commenters also argued that the restriction was illogical because IO and PO securities often are less volatile than other types of securities that could be sold to the general public under the proposed rule.²⁹ The Commission agrees with these commenters, and paragraphs (a)(1) and (b)(2) have been modified accordingly.³⁰ Nothing related to the Commission's adoption of this rule should be deemed to limit the duties of broker-dealers to observe suitability requirements.³¹

²⁶ Compare FMR Comment Letter, *supra* note 24, at 7; NASAA Comment Letter, *supra* note 10, at 2-3 (supporting restriction) with, e.g., ABA Task Force Comment Letter, *supra* note 14, at 6; Brown & Wood Comment Letter, *supra* note 15, at 10-11 (opposing restriction).

²⁷ See Cadwalader, Wickersham & Taft Comment Letter, *supra* note 14, at 10.

²⁸ See, e.g., *id.*; Letter from Lehman Brothers to Jonathan G. Katz, Secretary, SEC 2 (Aug. 18, 1992) File No. S7-12-92.

²⁹ See, e.g., ABA Task Force Comment Letter, *supra* note 14, at 5. Commenters also argued that investors should not be precluded from using IO and PO securities for hedging purposes. See, e.g., Stroock & Stroock & Lavan Comment Letter, *supra* note 14, at 13; and that the definitions of IO securities, PO securities, and "other securities with similar characteristics" are vague. See, e.g., Cleary Gottlieb, Steen & Hamilton Comment Letter, *supra* note 20, at 5, 7-8.

³⁰ The definition of fixed-income securities is intended to encompass the various types of debt and debt-like securities currently offered by structured financings. The definition is not intended, however, to include residual interests structured as debt securities where a large portion of the investor's return is contingent. Based on language suggested by commenters, paragraph (b)(2) also has been modified to remove ambiguities and to delineate other methods currently used to calculate interest on asset-backed securities. See, e.g., Brown & Wood Comment Letter, *supra* note 15, at 8; ABA Task Force Comment Letter, *supra* note 14, at 8.

³¹ As noted in the Proposing Release, the Federal Financial Institutions Examination Council adopted a supervisory policy statement that includes restrictions governing the trading of IO and PO securities by national banks due to the volatility of these instruments. Comptroller of the Currency, Administrator of National Banks, Supervisory Policy Statement on Securities Activities, Banking Circular No. 228 (Rev.) (Jan. 10, 1992). Likewise, the National Association of Insurance Commissioners is drafting a proposal limiting insurance company purchases of these securities.

Finally, paragraph (a)(1) requires issuers to issue fixed-income securities or other securities which entitle security holders to receive payments that depend primarily on the cash flow from eligible assets. The proposed paragraph would have required issuers to issue primarily fixed-income securities with payment thereon dependent on the cash flow from eligible assets.

Several commenters expressed concern regarding the proposed requirement that an issuer primarily issue fixed-income securities. Commenters pointed out that the requirement could unnecessarily restrict the ability of issuers to rely on the rule where, for example, the value of non-fixed income obligations (e.g., residual interests) exceeded the value of the issuer's fixed-income securities.³² Accordingly, final paragraph (a)(1) permits the issuance of both fixed-income securities and other securities, provided payment on these obligations is based primarily on cash flows from the underlying asset pool.³³

Commenters also suggested that the proposed provision governing payments based on cash flows be modified to permit securities to be paid from collections from cash collateral accounts and other forms of credit enhancements, and to permit asset-backed commercial paper programs that use liquidity facilities to rely on the rule.³⁴ The provision tying payments to cash flows is intended to include payments obtained in any manner other than from the market value or fair value of the eligible assets.³⁵ As such, and in light of the broad definition of eligible assets in paragraph (b)(1), modification of this requirement is unnecessary.

In addition, in some financings, residual interests are paid, in part, out of the proceeds from the disposition of

eligible assets.³⁶ To address this practice, final paragraph (a)(1) requires the issuance of securities *primarily* backed by the cash flows from eligible assets.³⁷

(ii) *Nature of the Securities Sold to the Public.* Under paragraph (a)(2) of the final rule, fixed-income securities that are rated, at the time of initial sale, in one of the four highest long-term debt categories or an equivalent short-term category by at least one nationally recognized statistical rating organization, or "rating agency," may be sold by the issuer and any underwriter without restriction.³⁸ Other fixed-income securities may be sold only to accredited investors as defined in rule 501(a)(1), (2), (3), and (7) under the Securities Act³⁹ and to entities in which all of the equity owners qualify as such investors ("institutional accredited investors"). Finally, all other securities, such as residual interests, could be sold only to "qualified institutional buyers" as defined in rule 144A under the Securities Act⁴⁰ and to persons involved in the organization or operation of the issuer and their affiliates.

The final rule, as a condition to the availability of the exemption, retains a rating requirement for securities sold to the general public. Virtually all commenters supported this approach.⁴¹

³⁶ These financings are not structured as market value transactions, even though payment of their residual interests may depend, in part, on the market value of the disposed assets.

³⁷ Similarly, financings whose fixed-income securities are paid, in part, from funds obtained through the disposition of assets that, for example, do not conform to a representation or warranty would be able to satisfy the provision.

³⁸ As in the case of the proposed rule, the rating agency may not be an affiliated person of the issuer or of any person involved in the organization or operation of the issuer, such as the financing's sponsor, servicer, trustee, and provider of credit support.

³⁹ 17 CFR 230.501(a)(1), (2), (3), (7). These investors generally include banks, savings and loan associations, registered broker-dealers, insurance companies, registered investment companies, business development companies, small business development companies, state and local government employee benefit plans with total assets in excess of \$5 million, certain employee benefit plans regulated under the Employee Retirement Income Security Act of 1974, corporations, business trusts, partnerships, and charitable organizations with total assets in excess of \$5 million, and private business development companies. *Id.*

⁴⁰ 17 CFR 230.144A.

⁴¹ See, e.g., Cleary, Gottlieb, Steen & Hamilton Comment Letter, *supra* note 20, at 17-18. Only two commenters, neither of which participates in the structured finance industry, opposed the use of a rating standard. ICI Comment Letter, *supra* note 10 at 14-17 (suggesting as an alternative limiting the sale of securities issued in structured financings to accredited investors); NASAA Comment Letter, *supra* note 10, at 3-4.

The rating requirement is incorporated in the rule as a means of distinguishing structured financings from registered investment companies. The Commission wishes to emphasize that, although ratings generally reflect evaluations of credit risk, the rating requirement is not intended to address investment risks associated with the credit quality of a financing.

The involvement of rating agencies represents one of the most significant attributes of the structured finance market. This is because structured financings enable issuers to generate capital by converting often illiquid, unrated assets into marketable rated securities. As discussed in the proposing release, rating agency evaluations tend to address most of the Act's concerns regarding abusive practices, such as self-dealing and overreaching by insiders, misvaluation of assets, and inadequate asset coverage.⁴² Rating agencies have been successful in analyzing the structural integrity of financings, without impeding the development of the structured finance market. Indeed, ratings appear to have been a major factor in investor acceptance of structured financings.

The proposed rule would have limited securities sold to the public to those rated in one of the two highest categories. Most commenters favored a rating in one of the four highest categories (*i.e.*, an investment grade rating), which has been incorporated in the final rule.⁴³

Investment grade financings have virtually the same structural safeguards. As several commenters noted, the difference between obligations rated in one of the two highest categories and those receiving an investment grade

rating generally does not reflect a diminution in the structured protections attending the financing. Rather, variances within the investment grade category tend to reflect differences in the credit quality of the obligation. In addition, consistent with the intent of the rule, the investment grade standard is more likely to accommodate a greater number and newer types of securitizations, such as financings involving small businesses.⁴⁴

The final rule clarifies that the rating may include those assigned long-term debt obligations or an equivalent short-term rating, as appropriate to the obligation's maturity.⁴⁵ While most financings issue long-term debt, newer structures, such as asset-backed commercial paper programs, issue short-term obligations. By permitting reliance on either a long-term or a short-term rating, the final rule reflects the varying types of structures. The final rule also recognizes that a particular rating category may include a sub-classification or gradation (such as a plus or minus) to indicate relative standing within that category.

As in the case of the proposed rule, the final rule requires securities to be rated by only one rating agency. Almost all commenters favored this approach. Unlike evaluations of credit quality, rating agencies are highly unlikely to disagree as to the fundamental structural and operational integrity of a financing. Mandating ratings from more than one rating agency could increase substantially the costs of structured financings, without any commensurate benefit to public investors.⁴⁶

In addition, like the proposed rule, the rating requirement applies only at the time a security is sold by the issuer or any underwriter acting on its behalf.⁴⁷ In

the event of a rating downgrade, secondary market transactions in securities sold to the public would not jeopardize the issuer's continued reliance on the rule.⁴⁸ The final provision clarifies that the rating requirement applies solely to initial sales by the issuer or any underwriter.⁴⁹ The rating requirement thus would not apply at the time of remarketing procedures used by some financings to periodically set the interest rate on the financing's fixed-income securities.

Under the final rule, fixed-income securities that do not meet the rating requirement (including unrated obligations) may be sold to institutional accredited investors. Any securities, without regard to type or rating (*e.g.*, residual interests), may be sold to qualified institutional buyers as defined in rule 144A under the Securities Act and to persons involved in the organization or operation of the issuer and their affiliates. As proposed, securities not meeting the rule's rating requirement or qualifying as fixed-income securities ("non-conforming securities") could have been sold only to qualified institutional buyers and to affiliated persons of the issuer.

Most commenters indicated that limiting sales of non-conforming securities to qualified institutional buyers would be too restrictive, particularly with respect to sales of lower and unrated fixed-income securities. Several commenters recommended the two-tier approach incorporated in the final rule.⁵⁰

respective securities are sold to the appropriate class of investors.

⁴² Several commenters suggested that the rating requirement apply at the time securities are issued, as opposed to the time of actual sale. These commenters expressed concern that an underwriter could cause an issuer to lose the exemption where a rating downgrade occurred prior to the underwriter's sale of its allotment. *See, e.g.*, Cadwalader, Wickersham & Taft Comment Letter, *supra* note 14, at 13-14. The Commission believes it is appropriate to require that the structural safeguards attending an investment grade rating be assured at the time securities are first sold to the public. As discussed *infra*, issuers may maintain the continued availability of the exemption by, for example, requiring underwriters to sell downgraded securities to sophisticated investors or to persons involved in the financing as specified in subparagraphs (a)(2)(i) and (ii).

⁴³ In some structures, securities are sold by the issuer and its underwriters at different times (*e.g.*, master trusts) or on an ongoing basis (*e.g.*, asset-backed commercial paper programs). The rating requirement applies to all such sales (regardless of the similarity or dissimilarity of the securities involved), not just to the first sale in any series of sales.

⁴⁴ *See, e.g.*, ABA Task Force Comment Letter, *supra* note 14, at 13. Some commenters also recommended a subjective standard that would reach persons with significant experience in the

One commenter recommended that the rating requirement apply to only one class, or "tranche," of an issuer's securities. Brown & Wood Comment Letter, *supra* note 15, at 4. The Commission did not follow this approach, out of a concern that the structural safeguards achieved through the rating process accompany all securities sold to unsophisticated investors. Since the vast majority of financings offer to the public only obligations rated investment grade, the rating requirement should not materially affect the structured finance market.

⁴² Proposing Release, *supra* note 7, sections I.B. and II.A.2.(ii). *See also* text accompanying note 78 *infra*.

⁴³ Only one commenter suggested that a rating in any category would be sufficient for securities sold to the general public. Letter from Debevoise & Plimpton, on behalf of The New York Life Insurance Company, to Jonathan G. Katz, Secretary, SEC 6-17 (Aug. 4, 1992), File No. S7-12-92. Because financings rarely, if ever, sell securities rated below investment grade to persons other than sophisticated investors, such an approach would be contrary to current industry practice. In addition, lower-rated securities may present the types of investor protection concerns, most notably with respect to leverage, addressed by the Investment Company Act.

⁴⁴ The investment grade standard also is consistent with the Commission's recent amendments to Form S-3. *See* Sec. Act Rel. 6964, *supra* note 12.

⁴⁵ Short-term ratings generally cover securities with a maturity of one year or less. Because a rating agency's long-term ratings generally do not correspond to those assigned short-term debt, a short-term rating in one of the four highest categories may not equate to the investment grade standard contemplated by the rule. Accordingly, short-term obligations must receive a rating equivalent to investment grade. Depending on the rating agency, an equivalent short-term rating may represent the third or fourth highest short-term category.

⁴⁶ Counter to the intent of the rule, the costs associated with requiring two ratings also could be a barrier to the use of small and more innovative financings.

⁴⁷ To provide greater flexibility, the final rule applies solely to sales—and not to offers—by the issuer and its underwriters. Issuers, for example, would be permitted to offer residual interests and investment grade fixed-income securities pursuant to the same registration statement, so long as the

Continued

Commenters pointed out that a large number of institutional accredited investors that do not meet the definition of qualified institutional buyers routinely purchase non-investment grade fixed-income securities. By contrast, residual interests typically are sold only to very highly sophisticated investors, *i.e.*, those meeting the qualified institutional buyer test.

Non-conforming securities typically are not marketed to natural persons, who generally are not in a position to conduct their own due diligence analyses prior to investing. Accordingly, the rule retains the proposed exclusion of natural persons from the category of sophisticated investors eligible to purchase non-conforming securities.

Commenters also favored expansion of the proposed provision governing sales of non-conforming securities to affiliated persons of the issuer, pointing out that, in many financings, the issuer does not have any affiliates.⁵¹ The intent of the proposed provision was to codify the current practice of distributing non-conforming securities to persons involved in the financing, such as the sponsor or other provider of securitized assets. Accordingly, the final rule clarifies that non-conforming securities may be sold to persons involved in the operation or organization of the financing (excluding agencies rating the structure) and their affiliates.⁵²

As in the case of securities offered to the public, the final rule applies to the sale of non-conforming securities by the issuer or its underwriters.⁵³ To prevent the sale and resale of non-conforming securities to public investors, the issuer and its underwriters must exercise reasonable care to ensure that non-conforming securities are not sold or resold to persons other than those specified in subparagraphs (a)(2) (i) and (ii). Such reasonable care may include,

structured finance market. Such an approach may introduce unnecessary complexities in evaluating an investor's status under the rule.

⁵¹ See, *e.g.*, Cleary, Gottlieb, Steen & Hamilton Comment Letter, *supra* note 20, at 18. Issuers, for example, typically are established as independent entities to avoid the risk that insolvency on the part of the financing's sponsor will affect payments to investors.

⁵² This approach also addresses the intermediate step used in some financings where, prior to rating, securities are issued by a third party (*e.g.*, a special purpose corporation) to the entity that ultimately will issue securities in reliance on the rule.

To preserve their independence from the transaction, any agency rating the issuer's obligations could not purchase non-conforming securities. As indicated in the Proposing Release, *supra* note 7 at n.94, a trustee could purchase non-conforming securities (as well as rated obligations) so long as the trustee remains unaffiliated with the financing.

but is not limited to, contractual restrictions on sale and resale, the placement of cautionary legends on certificated securities, inquiry to determine if the investment is made by the entity or on behalf of others, and appropriate disclosure.⁵⁴

(iii) *Acquisition and disposition of eligible assets.* Paragraph (a)(3) permits an issuer to acquire additional eligible assets or to dispose of eligible assets during the operation of the financing, provided three conditions are satisfied.⁵⁵ Paragraph (a)(3) differs significantly from the proposed provision, in response to suggestions made by commenters.

Proposed paragraph (a)(3) would have required an issuer to hold substantially all eligible assets to maturity, subject to four limited exceptions.⁵⁶ The provision sought to ensure that any changes in a financing's assets would not adversely affect the issuer's outstanding fixed-income security holders, and that the underlying asset pool would not be "managed" to the same extent and in the same manner as a management investment company.⁵⁷ At the same time, the provision was intended to permit financings to operate without undue impediments and to codify current practices. The Commission requested comment on whether proposed paragraph (a)(3) would achieve its intended purposes, and whether an alternative approach would be more appropriate.

One commenter stated that proposed paragraph (a)(3) satisfactorily balanced the need for flexibility while ensuring that financings would not act like management investment companies.⁵⁸

⁵³ While limiting the type of investor eligible to purchase non-conforming securities, the rule would not restrict the offering mechanism employed. As in the case of securities offered to the public, issuers and underwriters would be free to sell non-conforming securities through private placements or public offerings.

⁵⁴ These steps parallel those set forth in Regulation D with respect to the resale of privately placed securities. See 17 CFR 230.502(d).

⁵⁵ Assets that do not meet the definition of eligible assets are not subject to these conditions.

⁵⁶ The four exceptions would have permitted the issuer to (i) substitute eligible assets for other eligible assets of the same type and of the same or higher credit quality; (ii) substitute pursuant to a defeasance mechanism government securities for eligible assets, provided such government securities produce cash flows similar to those expected from the replaced asset; (iii) acquire additional eligible assets that do not result in a downgrading in the rating of the issuer's outstanding fixed-income securities; and (iv) dispose of eligible assets in connection with the issuer's termination.

⁵⁷ The "management" of structured financings is significantly different from that of management investment companies. For example, in a structured financing, the servicer (unlike most investment advisers of management investment companies) generally has very limited discretion and must

Two other commenters argued that the proposed provision was not restrictive enough and would permit structured financings that acquire and remove assets on an ongoing basis (*e.g.*, asset-backed commercial paper programs) to be managed in a manner similar to management investment companies.⁵⁹

Most commenters, however, argued that proposed paragraph (a)(3) was too restrictive, since it was inconsistent with the operation of many financings. For example, commenters noted that the proposal could cause particular difficulties for financings backed by credit card receivables⁶⁰ and asset-backed commercial paper programs.⁶¹ It also would preclude financings from engaging in common activities that do not in any sense parallel typical "management" of registered investment company portfolios, including selling assets where documentation is defective or for nonconformity with representations and warranties, disposing of assets in default or in imminent default, and removing excess credit support.⁶²

follow specific guidelines established prior to the issuance of the financing's securities. Also, unlike mutual funds, the acquisition or disposition of assets in a structured financing rarely affects the payment of the outstanding securities held by the general public. Finally, the acquisition or disposition of assets in a structured financing generally does not occur for the sole purpose of achieving gains or decreasing losses resulting in market value changes.

⁵⁸ Letter from Chemical Bank to Jonathan G. Katz, Secretary, SEC 3-4 (Aug. 3, 1992), File No. S7-12-92 (hereinafter Chemical Bank Comment Letter).

⁵⁹ See NASAA Comment Letter, *supra* note 10, at 4-5; ICI Comment Letter, *supra* note 10, at 6-13. The ICI specifically argued that these types of structured financings should not be able to rely on the rule. *Id.*, at 12-13. In addition, another commenter stated that the asset management limitations should be made more restrictive to increase investor protection. FMR Comment Letter, *supra* note 24, at 4-5.

⁶⁰ Credit card financings are backed by current and future receivables generated by specified credit card accounts; the balance of the pool fluctuates as new receivables are generated and existing amounts are paid. To accommodate the fluctuating balance, a seller (sponsor) certificate is issued to absorb the variations in the balance of the pool, thereby enabling the principal balance of the investor certificates to be maintained at a fixed level for a stated term. Proposed paragraph (a)(3) would have prohibited the disposal of assets not needed to pay the investor certificates if the seller's interest becomes disproportionately large, causing unnecessary economic burdens on the seller. Arguably, such burdens could limit the number of these financings eligible to rely on the rule. See, *e.g.*, ABA Task Force Comment Letter, *supra* note 14, at 16-17.

⁶¹ Asset-backed commercial paper programs maintain the credit quality of their assets and the liquidity of their securities primarily through the disposition of assets. Such dispositions would have been prohibited under the proposal. See Citibank Comment Letter, *supra* note 15, at 9.

Paragraph (a)(3), as adopted, effectuates the intent of the proposed provision, but uses a different approach derived from the suggestions of commenters. The paragraph provides virtually all structured financings, including those that require a significant degree of asset acquisitions and dispositions, the flexibility to engage in current practices without raising concerns that they could engage in portfolio management practices resembling those employed by mutual funds. Paragraph (a)(3)(i) permits an issuer to acquire additional assets or dispose of eligible assets (regardless of whether other assets are substituted for the removed assets) only if that action complies with the terms and conditions set forth in the agreements, indentures, or other instruments pursuant to which the issuer's securities are issued.⁶³ Typically, the types (and, in some instances, the credit quality) of assets that a financing may acquire, and the conditions under which an issuer may add or remove assets, are identified specifically in the financing's operative documents at the initiation of the financing. Accordingly, paragraph (a)(3)(i) merely codifies industry practice.⁶⁴

Paragraph (a)(3)(ii) permits assets to be acquired or disposed of during the operation of the financing, if such action does not result in a downgrading of the rating of the financing's outstanding fixed-income securities. This provision is similar to proposed paragraph (a)(3)(iii) except that it applies to both the acquisition and disposition of

eligible assets.⁶⁵ By precluding actions that result in a rating downgrade, paragraph (a)(3)(ii) is intended to ensure that any changes in the financing's assets will not adversely affect the financing's outstanding fixed-income security holders.⁶⁶

Finally, paragraph (a)(3)(iii) does not allow the acquisition or disposition of eligible assets primarily for the purpose of recognizing gains or preventing losses resulting from market value changes. This condition prohibits an issuer from purchasing eligible assets with the hope of realizing capital gains through resale after such assets have appreciated in value. It also will prevent an issuer from disposing of assets, regardless of the reason for their acquisition, primarily to obtain a profit.⁶⁷ Issuers, however, would be permitted to retain any profits obtained through the disposition of assets, provided the assets were not removed for the primary purpose of obtaining that profit.⁶⁸

⁶³ Proposed paragraph (a)(3)(iii) would have applied only to the acquisition of eligible assets. Two commenters suggested changes to the proposed paragraph that effectively would have prevented asset-backed commercial paper programs and other types of financings from relying on the rule. See ICI Comment Letter, *supra* note 10, at 13; FMR Comment Letter, *supra* note 24, at 4. Many other commenters, however, suggested maintaining the provision, either as proposed or in the form adopted. See, e.g., Letter from Dean Witter to Jonathan G. Katz, Secretary, SEC 10-11 (Aug. 14 1992), File No. S7-12-92 (hereinafter Dean Witter Comment Letter).

⁶⁴ The provision also addresses, in part, one concern raised by the ICI—the danger of self-dealing by affiliates. See ICI Comment Letter, *supra* note 10, at 6-8. The rating agency evaluations address most of the Act's concerns about abusive practices, including self-dealing and overreaching by insiders. Any addition or removal of assets by insiders that could result in investor harm would result in a downgrading of the outstanding fixed-income securities. In addition, the involvement of an independent trustee, as required by the rule, also will alleviate this concern.

⁶⁵ In the Proposing Release, *supra* note 7, the Commission specifically requested comment on whether it would be appropriate to include a general prohibition on the trading of assets for profit. Several commenters supported this approach. See, e.g., Letter from the American Bankers Association to Jonathan G. Katz, Secretary, SEC 4 (Aug. 4, 1992), File No. S7-12-92; Mayer, Brown & Platt Comment Letter, *supra* note 15, at App. 5-6; Stroock & Stroock & Lavan Comment Letter, *supra* note 14, at 7-12. A few commenters suggested that such a prohibition was vague and unworkable. See, e.g., Cleary, Gottlieb, Steen, & Hamilton Comment Letter, *supra* note 20, at n.11; Salomon Brothers Comment Letter, *supra* note 11, at 7. Paragraph (a)(3)(iii) has been drafted in a way designed to address these commenters' concerns.

⁶⁶ For example, an issuer may sell eligible assets that do not conform to a representation or warranty. Similarly, an issuer may sell eligible assets in excess of required levels where the assets were acquired for credit enhancement and are sold because they are no longer needed to ensure payment of the fixed-income securities. An issuer, however, may not obtain an eligible asset for the primary purpose of enabling residual holders to benefit from market appreciation upon any subsequent sale.

Some commenters, while favoring the requirement that issuers hold substantially all assets to maturity, suggested amendments to the proposed exceptions, or the addition of new exceptions, intended to reflect industry practice. This approach would require a lengthy, detailed list of exceptions, which could, in effect, frustrate the development of other types of financings.⁶⁹

The Commission also declined to impose an objective limitation on the number of portfolio transactions. In the proposing release, the Commission requested comment on whether proposed paragraph (a)(3) should be replaced with a condition requiring that a specified percentage (e.g., sixty percent) of the aggregate amount of pooled assets be held to maturity. Commenters responded that such a restriction is arbitrary and would unduly limit flexibility.⁷⁰

(iv) *The Independent Trustee.*

Paragraph (a)(4) retains the requirement that the trustee not be affiliated with the issuer or with any person involved in the organization or operation of the issuer.⁷¹ The Commission declined to adopt the suggestion made by two commenters that the rule permit the trustee to be affiliated with some of the parties involved in the financing's operation.⁷² Adoption of this suggestion could result in the trustee monitoring the activities of an affiliate. The rule, however, does not prevent a trustee from assuming the duties of servicer if the primary servicer is unable to perform its duties, or to perform other duties with respect to the operation of the financing.⁷³ The rule, however, would not allow a trustee to provide credit enhancement in support of the issuer's securities.

Paragraph (a)(4) also retains the requirement that the trustee execute an agreement stating that it will not resign

⁶⁹ Based on suggestions from commenters, at least 14 additional exceptions would need to be included in the rule for structured financings to operate in accordance with current industry practice. Of course, it is impossible to determine the other exceptions that would be required to address future innovations in the structured finance market.

⁷⁰ See, e.g., Cleary, Gottlieb, Steen & Hamilton Comment Letter, *supra* note 20, at n.11.

⁷¹ Paragraph (a)(4) also retains the proposed requirement that the trustee be a bank that meets the requirements of section 26(a)(1) governing trustees of unit investment trusts. See 15 U.S.C. 80a-26(a)(1).

⁷² See Letter from RFC to Jonathan G. Katz, Secretary, SEC 5 (Aug. 3, 1992), File S7-12-92 (trustee should be allowed to be affiliated with subservicers of the assets) [hereinafter RFC Comment Letter]; Chemical Bank Comment Letter, *supra* note 58, at 5 (trustee should be allowed to be affiliated with the underwriter and placement agent).

⁶² See, e.g., Citibank Comment Letter, *supra* note 4 at 8-9; Letter from First Chicago to Jonathan G. Katz, Secretary, SEC 5-6 (July 28, 1992), File No. S7-12-92 [hereinafter First Chicago Comment Letter]; Cleary, Gottlieb, Steen & Hamilton Comment Letter, *supra* note 20, at 11.

⁶³ Several commenters included a similar requirement in their suggested changes to proposed paragraph (a)(3). See, e.g., Kirkland & Ellis Comment Letter, *supra* note 23, at 16; Salomon Brothers Comment Letter, *supra* note 11, at 6.

⁶⁴ This requirement is not intended to prevent an issuer (or any party acting on its behalf) from having any discretion with respect to its assets. Issuers often have discretion with respect to routine, perfunctory matters that do not affect the payment of the fixed-income securities. In addition, issuers often have some discretion in connection with the disposition or acquisition of their assets, provided such actions meet predetermined guidelines set forth in the operative documents.

The Commission also is aware that in several circumstances financings have had to sell or acquire assets in ways that were not anticipated at the time the financing was established. In these cases, the operative documents were amended, with both investor and rating agency concurrence. Paragraph (a)(3)(i) would permit the continuation of this practice.

until the structured financing has been completely liquidated or until a successor trustee has been designated. Unlike the proposed paragraph, however, paragraph (a)(4) does not require the agreement to provide that the sponsor or its agent keep a record of the financing's security holders. The Commission eliminated this requirement in response to commenters' concerns that it would, in effect, prohibit the issuance of bearer securities, which are used frequently in international offerings.⁷⁴

Paragraph (a)(4) also requires the issuer to take reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in eligible assets that principally generate the cash flow needed for payment on the fixed-income securities. It also would require that cash flows from eligible assets be deposited periodically in a segregated account maintained or controlled by the trustee.

Proposed paragraph (a)(4) would have required all property of the issuer at the time the financing is established, and all subsequently acquired property (including cash flows) to be transferred to the trustee within a reasonable time of receipt. This would have prohibited servicers from commingling the financing's cash flows with its own. The Commission proposed this requirement as a means to ensure the safekeeping of the issuer's assets.

Virtually all commenters argued that the proposed requirement, if interpreted literally, was inconsistent with industry practice, and would be so impractical and expensive to implement that it could eliminate the economic benefit of structured financings as a finance alternative.⁷⁵ Commenters generally explained that, under industry practice, whether a trustee takes physical possession of any of the issuer's assets depends on a number of factors. Often a trustee may not take possession of the assets because their transfer to the trustee is too burdensome, the servicer needs the assets for servicing purposes, or the asset itself is incapable of physical possession.⁷⁶ In addition, whether a servicer commingles the financing's cash flow with its own assets and, if so, how long, may depend on the type of the asset securitized, and the capability of the servicer's computer

systems to track the cash flow.⁷⁷ Commenters argued that the fact that the trustee may not physically hold the assets does not place the assets at risk, because the rating agencies closely evaluate the servicer's creditworthiness and capability to perform its responsibilities, and require the financing be operated in a manner that would minimize any risk to the safekeeping of the assets.⁷⁸

Accordingly, some commenters argued that since requirements assuring the safekeeping of the assets vary from transaction to transaction, it is difficult to devise a standard for all structured financings without impeding industry practice.⁷⁹ These commenters suggested that the Commission delete any requirement with respect to the safekeeping of the assets.⁸⁰ Other commenters, however, suggested as an alternative that the rule require only that an issuer take actions necessary for the trustee to have a perfected security interest or an ownership interest in the assets.⁸¹

In recognition of the importance of safekeeping of assets under the Investment Company Act, the Commission has determined to require safekeeping of assets, but in a way that it believes is consistent with industry practice. Paragraph (a)(4) requires that an issuer take *reasonable* steps to provide the trustee with perfected

security interests or ownership interests. The rule does not require that a perfected security interest be a *first* security interest. This requirement applies only to assets that *principally* provide the cash flow needed for payments on the fixed-income securities; thus, perfected or ownership interests in ancillary assets are not required.⁸²

With respect to cash flows, paragraph (a)(4) requires that they periodically be deposited in a segregated account, consistent with rating agency requirements. Thus, possession of cash flows by the servicer for periods of time would be permitted where a rating agency has determined that the risk of loss therefrom is minimal.

Finally, paragraph (a)(4) excludes asset-backed commercial paper programs from its requirements. Several commenters noted that these programs ordinarily operate without a trustee.⁸³ Commenters argued that requiring a trustee would not be practical and would do little to add to investor protection, due to the short-term of the securities, the short-term nature of the assets underlying these programs, the multi-seller structures used in such programs, and the roles of providers of credit and liquidity facilities.⁸⁴ Upon reflection, the Commission agrees requiring a trustee for commercial paper programs would be costly and would not add to investor protection.⁸⁵

B. Amending Section 3(c)(5)

In the proposing release, the Commission requested comment on whether section 3(c)(5) should be amended, either to include other financing activities, or to prevent structured financings from continued reliance. Two commenters suggested that the section be expanded to exclude other financing techniques from the

⁷⁴ See, e.g., Dean Witter Comment Letter, *supra* note 65, at 6 (the loan documentation for boat, automobile, and recreational vehicle loans generally is not transferred to the trustee, absent a compelling business reason for doing so, because of the enormous administrative and financial burden it would place on the originator of the assets); SIA Comment Letter, *supra* note 24, at 19 (assets needed for servicing purposes); Merrill Lynch Comment Letter, *supra* note 16, at 7 (some assets, such as credit card receivables and book-entry securities, exist only as computer entries).

⁷⁵ See First Chicago Comment Letter, *supra* note 62, at 7-8 (in a financing backed by credit card account receivables, commingling is unavoidable when the servicer has rights to the monthly excess funds attributable to finance charge receivables that exceed the amount needed to pay investors); ABA Task Force Comment Letter, *supra* note 14, at 23 (discussing computer capabilities).

⁷⁶ See, e.g., Mayer, Brown & Platt Comment Letter, *supra* note 15, at App. 14-15; Letter from Sears to Jonathan C. Katz, Secretary, SEC 5-6 (Aug. 14, 1992), File No. S7-12-92. For example, the rating agencies generally permit a servicer with an equal or higher rating as the financing's fixed-income securities to commingle the financing's cash flows with its own assets. In instances where the servicer does not possess the appropriate rating, the rating agencies may devise an alternative arrangement to permit the servicer to commingle assets without jeopardizing investor protection. See Dean Witter Comment Letter, *supra* note 65, at 5.

⁷⁷ See, e.g., Brown & Wood Comment Letter, *supra* note 15, at 18; Stroock & Stroock & Lavan Comment Letter, *supra* note 14, at 19.

⁷⁸ See, e.g., Stroock & Stroock & Lavan Comment Letter, *supra* note 14, at 19.

⁸¹ See, e.g., ABA Task Force Comment Letter, *supra* note 14, at 20-21, 24.

⁸² For example, in a structured financing backed by automobile loans, security interests would be required to be perfected in the loans, but not in the automobiles themselves.

The Commission recognizes that under the Uniform Commercial Code, possession may be required to create a valid security interest for certain instruments, e.g., mortgage notes. Accordingly, perfection may be lost when the trustee is required to deliver to the servicer assets needed for the operation of the financing, e.g., servicing. The provision has been drafted to permit trustees to continue this practice. See ABA Task Force Comment Letter, *supra* note 14, at 24.

⁸³ Cleary, Gottlieb, Steen & Hamilton Comment Letter, *supra* note 20, at 21; Kirkland & Ellis Comment Letter, *supra* note 23, at 7.

⁸⁴ See, e.g., Letter from Karen J. Kirchen, General Group Counsel, Citibank, to Marianne K. Smythe, Director, Division of Investment Management, SEC 4 (Sept. 25, 1992), File No. S7-12-92.

⁷³ Several commenters requested clarification on this issue. See, e.g., RFC Comment Letter, *supra* note 72, at 5.

⁷⁴ See Cleary, Gottlieb, Steen & Hamilton Comment Letter, *supra* note 20, at 19-20.

⁷⁵ See, e.g., Citibank Comment Letter, *supra* note 15, at 9-10; Dean Witter Comment Letter, *supra* note 65, at 2-6.

Act.⁶⁶ One commenter suggested that the section be narrowed to apply only to active businesses.⁶⁷ Most commenters, however, argued that it would be inappropriate to narrow the scope of section 3(c)(5), at least until both the market and the Commission gains experience with rule 3a-7.⁶⁸ Commenters also pointed to the difficulty of drafting an amendment that would exclude structured financings without inadvertently preventing traditional factoring vehicles from relying on the section.⁶⁹ In light of these comments, the Commission has decided not to pursue any legislative changes to section 3(c)(5) at this time.

In addition, the Commission's Division of Investment Management has decided not to withdraw at this time its no-action position with respect to the treatment of whole pool agency certificates under section 3(c)(5)(C).⁹⁰ The Commission announced in the proposing release that this position would be withdrawn upon adoption of rule 3a-7. Commenters strongly urged reconsideration of this decision. In particular, commenters argued that whole pool certificates should be considered to be interests in real estate because holders of such certificates receive payment streams that reflect payments on the underlying mortgages.⁹¹ Moreover, they argued that withdrawal

of this position could cause real estate investment trusts and mortgage bankers that hold whole pool agency certificates to become subject to the Act.⁹²

III. Cost/Benefit Analysis

The rule will reduce a number of unnecessary costs by permitting certain types of structured financings to be sold in public offerings, rather than in private placements. This should reduce costs for issuers and allow investors access to a greater variety of financings. The rule also would mean that issuers of certain types of mortgage-related securities no longer would have to apply to the Commission for individual exemptive orders. This should reduce costs both for the issuers and for the Commission.

IV. Summary of the Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding adoption of rule 3a-7. The Analysis explains that the rule is intended to reduce an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy, including the small business sector. The Analysis explains that current law has constricted the development of the structured finance industry. It states that the costs of compliance with rule 3a-7 will be minimal because the proposal essentially codifies industry practice. A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Rochelle G. Kauffman, Esq., or Elizabeth R. Krentzman, Esq., both at Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Effective Date

Rule 3a-7 is effective upon publication in the **Federal Register**. Pursuant to 5 U.S.C. 553(d)(1), immediate effectiveness is appropriate because rule 3a-7 is purely exemptive in nature. It excludes structured financings from the definition of investment company, thereby permitting structured financings to offer their securities publicly in the United States without registering under the Act. The rule is intended to remove an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy. The benefits of the rule to both sponsors of financings and to potential investors should be available at the earliest possible time.

VI. Statutory Authority

The Commission is adopting rule 3a-7 under the exemptive and rulemaking authority set forth in sections 6(c) and 38(a) (15 U.S.C. 80a-6(c), -37(a)) of the Investment Company Act of 1940. The authority citations for these actions precede the text of the actions.

VII. Text of Adopted Rule

List of Subjects in 17 CFR Part 270

Investment Companies, Reporting and recordkeeping requirements, Securities

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, sections 80a-37, 80a-39 unless otherwise noted; * * *

2. By adding § 270.3a-7 to read as follows:

§ 270.3a-7 Issuers of Asset-Backed Securities.

(a) Notwithstanding section 3(a) of the Act, any issuer who is engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets (and in activities related or incidental thereto), and who does not issue redeemable securities will not be deemed to be an investment company; *Provided That:*

(1) The issuer issues fixed-income securities or other securities which entitle their holders to receive payments that depend primarily on the cash flow from eligible assets;

(2) Securities sold by the issuer or any underwriter thereof are fixed-income securities rated, at the time of initial sale, in one of the four highest categories assigned long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by at least one nationally recognized statistical rating organization that is not an affiliated person of the issuer or of any person involved in the organization or operation of the issuer, except that:

(i) Any fixed-income securities may be sold to accredited investors as defined in paragraphs (1), (2), (3), and (7) of rule 501(a) under the Securities Act of 1933 (17 CFR 230.501(a)) and any entity in which all of the equity owners come within such paragraphs; and

⁶⁶ The Proposing Release, *supra* note 7, requested comment on whether rule 3a-7 should specify other duties for trustees in addition to those proposed. For example, the release questioned whether any portion of the Trust Indenture Act's requirements should be made applicable to financings that are not subject to that Act. Most commenters argued that specifying additional duties for the trustee would be unnecessary, given the lack of abuse in the structured finance market. *See, e.g.*, Cadwalader, Wickersham & Taft Comment Letter, *supra* note 14, at 21. The Commission has determined not to specify any additional duties for the trustee.

⁶⁷ Letter from MBNA to Jonathan G. Katz, Secretary, SEC 7 (Aug. 4, 1992), File No. S7-12-92; Letter from New York State Bar Association to Jonathan G. Katz, Secretary, SEC 5 (Aug. 3, 1992), File No. S7-12-92. Neither commenter submitted specific language.

⁶⁸ ICI Comment Letter, *supra* note 10, at 20-22.

⁶⁹ *See, e.g.*, ABA Task Force Comment Letter, *supra* note 14, at 33; Cadwalader, Wickersham & Taft Comment Letter, *supra* note 14, at 21-22.

⁷⁰ *See, e.g.*, Letter from Sidley & Austin, on behalf of the Commercial Finance Association, to Jonathan G. Katz, Secretary, SEC (Aug. 5, 1992), File No. S7-12-92; Citibank Comment Letter, *supra* note 15, at 11.

⁹¹ The Division has taken the position that issuers holding whole pool certificates issued by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation can rely on section 3(c)(5) since such certificates are interests in real estate. *See, e.g.*, American Home Finance Corp. (pub. avail. Apr. 9, 1981). *See also* Proposing Release, *supra* note 7, at nn 44-45 and accompanying text.

⁹² *See, e.g.* Brown & Wood Comment Letter, *supra* note 15, at 20.

⁹³ *See, e.g.* ABA Task Force Comment Letter, *supra* note 14, at 27.

(ii) Any securities may be sold to qualified institutional buyers as defined in rule 144A under the Securities Act (17 CFR 230.144A) and to persons (other than any rating organization rating the issuer's securities) involved in the organization or operation of the issuer or an affiliate, as defined in rule 405 under the Securities Act (17 CFR 230.405), of such a person;

Provided, That the issuer or any underwriter thereof effecting such sale exercises reasonable care to ensure that such securities are sold and will be resold to persons specified in paragraphs (a)(2)(i) and (ii) of this section;

(3) The issuer acquires additional eligible assets, or disposes of eligible assets, only if:

(i) The assets are acquired or disposed of in accordance with the terms and conditions set forth in the agreements, indentures, or other instruments pursuant to which the issuer's securities are issued,

(ii) The acquisition or disposition of the assets does not result in a downgrading in the rating of the issuer's outstanding fixed-income securities; and

(iii) The assets are not acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market value changes; and

(4) If the issuer issues any securities other than securities exempted from the Securities Act by section 3(a)(3) thereof (15 U.S.C. 77c(a)(3)), the issuer:

(i) Appoints a trustee that meets the requirements of section 26(a)(1) of the Act and that is not affiliated, as that term is defined in rule 405 under the Securities Act (17 CFR 230.405), with the issuer or with any person involved in the organization or operation of the issuer, which does not offer or provide credit or credit enhancement to the issuer, and that executes an agreement or instrument concerning the issuer's securities containing provisions to the effect set forth in section 26(a)(3) of the Act;

(ii) Takes reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in those eligible assets that principally generate the cash flow needed to pay the fixed-income security holders, provided that such assets otherwise required to be held by the trustee may be released to the extent needed at the time for the operation of the issuer; and

(iii) Takes actions necessary for the cash flows derived from eligible assets for the benefit of the holders of fixed-income securities to be deposited

periodically in a segregated account that is maintained or controlled by the trustee consistent with the rating of the outstanding fixed-income securities.

(b) For purposes of this section:

(1) *Eligible assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(2) *Fixed-income securities* means any securities that entitle the holder to receive:

(i) A stated principal amount; or

(ii) Interest on a principal amount (which may be a notional principal amount) calculated by reference to a fixed rate or to a standard or formula which does not reference any change in the market value or fair value of eligible assets; or

(iii) Interest on a principal amount (which may be a notional principal amount) calculated by reference to auctions among holders and prospective holders, or through remarketing of the security; or

(iv) An amount equal to specified fixed or variable portions of the interest received on the assets held by the issuer; or

(v) Any combination of amounts described in paragraphs (b)(2)(i), (ii), (iii), and (iv) of this section;

Provided, That substantially all of the payments to which the holders of such securities are entitled consist of the foregoing amounts.

By the Commission.

Dated: November 19, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28728 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

Implementing Regulations for the U.S.-Canada Free-Trade Agreement

AGENCY: International Trade Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending subpart G of part 207 of its Rules to conform the Commission's regulations with amendments to the U.S.-Canada Free-Trade Agreement Implementation Act of 1988 (FTA Implementation Act) contained in section 134 of the Customs and Trade Act of 1990 (hereinafter "technical amendments"). The Commission's amendments modify and

finalize the Commission's interim regulations that were previously issued in an effort to conform the Commission's rules with the FTA Implementation Act, as amended.

The substantive amendments to subpart G clarify the requirements imposed on a person retaining access to proprietary information under a protective order issued during the administrative proceeding and clarify the categories of people whom the panel may determine are entitled to have access to privileged information.

DATES: Effective date: December 15, 1992.

FOR FURTHER INFORMATION CONTACT:

Abigail A. Shaine, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3094. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD Terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION:

Background.

On Friday, December 30, 1988, the Commission published in the *Federal Register*, the interim rules with a request for comments 53 FR 53248 (December 30, 1988), which rules were amended at 54 FR 36289 (September 1, 1989). These rules govern procedures for filing a Notice of Intent To Commence Judicial Review (§ 207.92), for granting access to proprietary information (§ 207.93), for governing access to privileged information when a panel orders the Commission to grant such access (§ 207.94), and for imposing sanctions for violations of the administrative protective orders (APO) (§§ 207.100 through 207.120.) No comments were received from the public on these rules.

On August 20, 1990, technical amendments were made by section 134 of the Customs and Trade Act of 1990, (Pub. L. 101-382) (August 20, 1990), to the FTA Implementation Act, (Pub. L. 100-449) (September 28, 1988). The U.S. and Canadian Governments also have amended the Rules of Procedure for Article 1904 Rules.

On August 6, 1992, the Commission published in the *Federal Register* amended interim rules with a request for comments. The Commission amended these rules to conform the Commission's regulations with amendments to the FTA Implementation Act and to the amended Article 1904 Rules.

The Commission received only three comments during the period allowed for public comment. One person commented that the interim rules did not allow for a

situation in which a party to a panel review was represented by a professional who was not acting under the direction or control of counsel. We note, however, that the Commission is not permitted under 19 U.S.C. 1677(f) to grant professionals access to proprietary information unless they are working under the direction and control of counsel.

One comment stated that § 207.94 of the interim rules fails to implement with sufficient detail or clarify the technical amendments of section 403(c) of the FTA Implementing Act, which provide that under certain circumstances a panel may determine that certain "authorized persons" require access to documents containing privileged information. The Commission has revised this regulation to clarify the procedural steps that must be taken before the Commission, acting pursuant to a panel order, will release privileged information. The Commission also has amended this regulation to clarify that, if granted access pursuant to an order of a panel, an individual who meets the definition of an "authorized person" may have access to privileged information.

The same commentator stated that rule 207.93(c), which concerns applying for access to proprietary information under protective order, is unnecessarily complicated. This Rule, however, reflects the Binational Panel Rules, which the Commission is obliged to follow.

A third comment criticized the lack of clarity of a provision of the Article 1904 Panel Rules, rather than any of the Commission's rules. The comment stated that Rule 56 of the Article 1904 Rules does not adequately provide for the possibility of access to privileged information in the context of an extraordinary challenge proceeding. This is not an issue which is appropriately addressed by a modification to the Commission's regulations. We note, however, that the Commission's rule governing access to privileged information is consistent with both Rule 56 of the Article 1904 Rules and Rule 12(c)(iv) of the Rules of Procedure for Article 1904 Extraordinary Challenge Committees, which address access to privileged information during the panel review process and the extraordinary challenge committee process respectively.

The addition of § 207.93(c)(5)(iii) clarifies the nature of the filings that must be made by counsel and professionals appearing before a panel who wish to retain proprietary information to which they have been granted access in an administrative proceeding under protective order.

The amendment to § 207.93(d)(2)(ii), renumbered as § 207.93(d)(2)(iv), shortens the time in which the Commission must issue an administrative protective order absent a denial of the application by the Secretary. This amendment ensures that in situations in which the Secretary has not concluded that there is a basis for denying access to proprietary information, such access will be granted at the earliest possible opportunity to enable the individuals concerned to commence their preparation for panel review.

None of the other amendments appearing in the final rules are substantive.

These final rules are exempt from the requirements of Section 553 of the Administrative Procedure Act (5 U.S.C. 553) because they are integral to the implementation of chapter 19 of the FTA and thus relate to a foreign affairs function of the United States.

The Commission has determined that these rules do not constitute a major rule for the purposes of Executive Order ("EO") 12291 (46 FR 13193, Feb. 17, 1981) because they do not meet the criteria described in section 1(b) of the EO. Moreover, because these rules concern a foreign affairs function of the United States, they are not rules within the meaning of section 1(a) of the EO.

The Regulatory Flexibility Act is inapplicable to these rules because they do not affect a large number of small entities and because these rules were not required by section 553 of the Administrative Procedure Act ("APA") or by any other law to be promulgated as proposed rules before their issuance as final rules.

Explanation of Changes to Amended Interim Rules

Section 207.91 Definitions Administrative Law Judge

There is no substantive difference between the interim rule and the enacted final rule.

Section 207.93

Section 207.93(b)(3)(i)

There is no substantive difference between the interim rule and the enacted final rule.

Section 207.93(c)(2)(ii)(A)(4)

There is no substantive difference between the interim rule and the enacted final rule.

Section 207.93(c)(3)

There is no substantive difference between the interim rule and the enacted final rule.

Section 207.93(c)(5)

The terms and conditions governing persons who retain access to proprietary information from the administrative proceeding during the panel review, as set forth in subparagraph (c)(5)(i), are substantively unchanged.

Subparagraph (c)(5)(iii) clarifies the fact that a person who retains access to proprietary information under a protective order issued during the administrative proceeding need not file a new application for a protective order at the commencement of a panel proceeding.

Section 207.93(d)(2)

The amendments to § 207.93(d)(2)(ii), renumbered as § 207.93(d)(2)(iv), shorten the time in which the Commission must issue an administrative protective order absent a denial of the application by the Secretary and clarify that the reference to the Secretary is to the Commission Secretary. This amendment ensures that in situations in which the Secretary has not concluded that there is a basis for denying access to proprietary information, such access will be granted at the earliest possible opportunity to enable the individuals concerned to commence their preparation for panel review. Section 207.93(d)(2)(iii) is renumbered to become § 207.93(d)(2)(ii) and the first sentence is revised to clarify that the reference to the Secretary is to the Commission Secretary. Section 207.93(d)(2)(iv) is renumbered to become § 207.93(d)(2)(iii) for the sake of clarity. The order in which the provisions appear in the final regulations reflects the orders in which the procedural steps described in those provisions occur.

Section 207.94

Section 207.94 is clarified to indicate the procedural steps which the Commission will take upon a Panel's direction to the Commission to release privileged information to specified persons. The Commission has also amended this regulation to clarify that, if granted access pursuant to order of a panel, an individual who meets the definition of an "authorized person" may have access to privileged information.

Section 207.102

Section 207.102(e)

There is no substantive difference between the interim rule and the enacted final rule.

Section 207.102(g)

There is no substantive difference between the interim rule and the enacted final rule.

*Section 207.103**Section 207.103(a)(2)*

There is no substantive difference between the interim rule and the enacted final rule.

*Section 207.105**Section 207.105(b)*

There is no substantive difference between the interim rule and the enacted final rule.

*Section 207.106**Section 207.106(d)*

There is no substantive difference between the interim rule and the enacted final rule.

Section 207.108

There is no substantive difference between the interim rule and the enacted final rule.

List of Subjects in 19 CFR Part 207

Administrative practice and procedure, Antidumping, Canada, Countervailing Duties, Imports, Trade agreements.

For the reasons set forth in the preamble, 19 CFR part 207, subpart G is amended as follows:

PART 207—[AMENDED]

1. The authority citation for part 207, subpart G, continues to read as follows:

Authority: Sec. 777 of the Tariff Act of 1930, as amended; secs. 403, 405(d) of the United States-Canada Free-Trade Implementation Act of 1988 (102 Stat. 1851, Pub. L. No. 100-449, Sept. 28, 1988); 19 U.S.C. 1335.

2. Section 207.91 is amended by revising the definition of Administrative Law Judge to read as follows:

§ 207.91 Definitions.

As used in this subpart—

Administrative Law Judge means the United States Government employee appointed under section 310(f) of title 5 of the United States Code to conduct proceedings under this part in accordance with section 554 of title 5 of the United States Code;

3. Section 207.93 is amended by revising paragraphs (b)(3)(i), (c)(2)(ii)(A)(4), (c)(3), (c)(5)(i), (c)(5)(iii), introductory text, (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), and by adding paragraph (c)(5)(iii) to read as follows:

§ 207.93 Protection of proprietary information during panel and committee proceedings.

(b) *Persons authorized to receive proprietary information under protective order.* The following persons may be authorized by the Commission to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Commission:

(3) Clerical persons who are employed or retained by and under the direction and control of a person described in paragraphs (b) (1), (2), (5) or (6) of this section who has been issued a protective order, if such clerical persons:

(i) are not involved in the competitive decision-making or the support functions for the competitive decision-making, of a participant to the proceeding or of any person who would gain a competitive advantage through knowledge of the proprietary information sought, and

(c) *Procedures for obtaining access to proprietary information under protective order—(1)* * * *

(2) *Contents of applications for release under protective order.*

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than:

(4) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b) (1), (2), (5), or (6) of this section who has been issued a protective order if such clerical person has signed and dated an agreement to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (b)(2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the U.S. or Canadian Secretariat. An application for any person described in paragraph (b)(5) or (b)(6) of this section may be filed at any time after the United

States Trade Representative or the Canadian Minister of Trade has notified the Commission Secretary that such person requires access.

(5) *Persons who retain access to proprietary information under a protective order issued during the administrative proceeding.* (i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, becomes immediately subject to the terms and conditions of Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person shall:

(iii) Any person described in paragraph (c)(5)(i) of this section need not submit a new application for a protective order at the commencement of a panel review.

(d) *Issuance of protective orders—(1)*

(2) *Applicants described in paragraph (b)(2) of this section.* (i) * * *

(ii) *Denial of the application.* If the Commission Secretary denies an application, he or she shall, within fourteen (14) days of the receipt of the application, serve a letter notifying the applicant of the decision and the reasons therefor. The letter shall advise the applicant of the right to appeal to the Commission. Any appeal must be made within five (5) days of the service of the Commission Secretary's letter.

(iii) *Appeal from denial of an application.* An appeal from a denial of a request must be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Such appeal must be served in accordance with paragraph (c)(4)(ii)(B) of this section. The Commission shall make a final decision granting or denying the appeal within thirty (30) days from the day on which the application was filed with the Commission Secretary.

(iv) *Approval of the application.* If the Commission Secretary does not deny an application pursuant to paragraph (d)(2)(ii) of this section, the Commission shall, by the fifteenth day following the receipt of the application, issue a protective order permitting the release of proprietary information to the applicant.

4. Section 207.94 is revised to read as follows:

§ 207.94 Protection of privileged information during panel and committee proceedings.

When and if a panel decides that the Commission is required, pursuant to United States law, to grant access pursuant to protective order to information for which the Commission has claimed a privilege, any individual to whom a panel has directed the Commission release information and who is otherwise within the category of individuals eligible to receive proprietary information pursuant to § 207.93(b), may file an application for a protective order with the Commission. Upon receipt of such application, the Secretary shall certify to the Commission that a panel has required the Commission to release such information to specified persons, pursuant to 19 U.S.C. 1677f(f)(1). Twenty-four hours following such certification, the Secretary shall issue a protective order releasing such information to any authorized applicant subject to terms and conditions equivalent to those described in § 207.93(c)(2).

5. Section 207.102 is amended by revising paragraphs (e) and (g) to read as follows:

§ 207.102 Initiation of proceedings.

(e) The Commission may make any determination regarding notification about the alleged prohibited act and the relevant underlying facts to the persons who submitted the proprietary information that allegedly has been disclosed. A determination by the Commission on this subject does not foreclose the administrative law judge from redetermining at any time during the hearing whether notification to the party who submitted the proprietary information is appropriate.

(g) All aspects of the inquiry shall remain confidential, except as deemed reasonably necessary to the Office of Unfair Import Investigations to gather relevant information and to protect the interests of the person who submitted the proprietary information, or except as otherwise ordered by the Commission.

Except as the Commission may otherwise order, the Commission Secretary shall maintain all closed investigatory files in confidence to the extent permitted by law, and shall destroy any documentary evidence containing allegations of a prohibited act for which no proceeding is initiated one year after the file is closed.

6. Section 207.103 is amended by revising paragraph (a)(2) to read as follows:

§ 207.103 Charging letter.

(a) * * *

(2) A citation to § 207.100 of this subpart, for a listing of sanctions that may be imposed for a prohibited act;

7. Section 207.105 is amended by revising paragraph (b) to read as follows:

§ 207.105 Confidentiality.

(b) *Confidentiality of proceedings.* Upon the request of any charged party pursuant to § 207.106 of this subpart, the administrative law judge will issue an appropriate confidentiality order. This order will provide for the confidentiality, to the extent practicable and permitted by law, of information relating to allegations concerning the commitment of a prohibited act, consistent with public policy considerations and the needs of the parties in conducting the sanctions proceedings. The order will provide that all proceedings under this provision shall be kept confidential within the terms of the order, except to the extent that a discussion of such proceedings is incorporated into a published final decision of the Commission. Any confidential information not disclosed in such decision will remain protected.

8. Section 207.106 is amended by revising paragraph (d) to read as follows:

§ 207.106 Interim measures.

(d) The administrative law judge may recommend to the Commission that interim measures be modified or revoked. The Commission shall rule on such recommendation within ten (10) days after its issuance or such other time as it may order.

9. Section 207.108 is amended by revising the first sentence to read as follows:

§ 207.108 Preliminary Conference.

As soon as practicable after the response to the charging letter is filed.

the administrative law judge shall direct the attorney or other representative for a party to meet with him or her at a preliminary conference, unless the administrative law judge determines that such a conference is not necessary. * * *

By order of the Commission.

Issued: November 18, 1992.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92-28662 Filed 11-25-92; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 60

[Docket No. 89N-0169]

Patent Term Restoration Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations to implement the patent term restoration provisions of the Generic Animal Drug and Patent Term Restoration Act. Current FDA regulations address patent term restoration, also known as patent term extension, for certain patents claiming human drug products (including biologics and antibiotics), medical devices, food additives, and color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act. This action expands the scope of the regulations to include patents claiming new animal drug products.

EFFECTIVE DATE: December 28, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 13, 1991 (56 FR 5786), FDA proposed amendments to 21 CFR part 60 of the patent term restoration regulations to implement the patent term restoration provisions of the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670). The intent of the proposed regulations was to expand the scope of the regulations to include animal drug products.

Interested persons were given until April 15, 1991, to submit comments on the proposed rule. No comments were

received in response to the proposal. Therefore, FDA is adopting the proposed rule without revision, and is amending 21 CFR 60 to include patents claiming new animal drug products.

Economic Assessment

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as defined by the Order. The agency has not received any new information or comments that would alter its previous determination.

FDA has determined that this rule, which expands the scope of the patent term restoration regulations to include animal drug products, will enable patent term extensions for certain patents associated with certain animal drug products. For those products where the patent term is extended, the patent holder or innovator firm could realize financial benefits as a result of the patent extension in the form of extended exclusive marketing rights. On the other hand, generic marketers of the affected animal drug products will be required to postpone marketing of their products until the patent extension period has expired, thereby postponing the entry of generic animal drug products into the marketplace. The benefit of patent term extension is that it may provide animal drug manufacturers with incentives towards drug innovation.

FDA has concluded that the economic effects of this rule to not meet the definition of a major rule under Executive Order 12291 and therefore a regulatory impact analysis is not required. Further, FDA has determined that this regulation will not impose a significant economic burden on a substantial number of small firms and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (Pub. L. 96-354).

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8), that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

This final rule does not add any information collection requirements to 21 CFR Part 60 although, pursuant to law, it does expand the scope of eligible products.

List of Subjects in 21 CFR Part 60

Administrative practice and procedure, Drugs, Food additives, Inventions and patents, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, the Drug Price Competition and Patent Term Restoration Act, and the Generic Animal Drug and Patent Term Restoration Act, 21 CFR part 60 is amended as follows:

PART 60—PATENT TERM RESTORATION

1. The authority citation for 21 CFR part 60 is revised to read as follows:

Authority: Secs. 409, 505, 507, 515, 520, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 357, 360e, 360j, 371, 376); sec. 351 of the Public Health Service Act (42 U.S.C. 262); 35 U.S.C. 156.

2. Section 60.1 is amended in the introductory text of paragraph (a) by revising the second sentence to read as follows:

§ 60.1 Scope.

(a) * * * Patent term restoration is available for certain patents related to drug products (as defined in 35 U.S.C. 156(f)(2)), and to medical devices, food additives, or color additives subject to regulation under the Federal Food, Drug, and Cosmetic Act or the Public Health Service Act. * * *

3. Section 60.3 is amended by revising the first sentence in paragraph (b)(2), the first sentence in paragraph (b)(5), and paragraphs (b)(11) (ii) and (iii), by adding new paragraph (b)(11)(iv), by revising paragraphs (b)(12) (ii) and (iii), by adding new paragraph (b)(12)(iv), by revising paragraph (b)(14), and by adding new paragraph (b)(16), to read as follows:

§ 60.3 Definitions.

* * *

(b) * * *

(2) *Active ingredient* means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or of animals. * * *

(5) *Clinical investigation or study* means any experiment that involves a test article and one or more subjects and that is either subject to requirements for prior submission to the Food and Drug Administration under section 505(i),

507(d), 512(j), or 520(g) of the Federal Food, Drug, and Cosmetic Act, or is not subject to the requirements for prior submission to FDA under those sections of the Federal Food, Drug, and Cosmetic Act, but the results of which are intended to be submitted later to, or held for inspection by, FDA as part of an application for a research or marketing permit. * * *

* * *

(11) * * *

(ii) Section 515 of the Act (medical devices);

(iii) Section 409 or 706 of the Act (food and color additives); or

(iv) Section 512 of the Act (animal drug products).

(12) * * *

(ii) Medical devices submitted under section 515 of the Act;

(iii) Food and color additives submitted under section 409 or 706 of the Act; or

(iv) Animal drug products submitted under section 512 of the Act.

* * *

(14) *Product* means a human drug product, animal drug product, medical device, food additive, or color additive, as those terms are defined in this section.

* * *

(16) *Animal drug product* means the active ingredient of a new animal drug (as that term is used in the Act) that is not primarily manufactured using recombinant deoxyribonucleic acid (DNA), recombinant ribonucleic acid (RNA), hybridoma technology, or other processes involving site-specific genetic manipulation techniques, including any salt or ester of the active ingredient, as a single entity or in combination with another active ingredient.

3. Section 60.10 is revised to read as follows:

§ 60.10 FDA assistance on eligibility.

(a) Upon written request from the U.S. Patent and Trademark Office, FDA will assist the U.S. Patent and Trademark Office in determining whether a patent related to a product is eligible for patent term restoration as follows:

(1) Verifying whether the product was subject to a regulatory review period before its commercial marketing or use;

(2) For human drug products, food additives, color additives, and medical devices, determining whether the permission for commercial marketing or use of the product after the regulatory review period is the first permitted commercial marketing or use of the product either:

(i) Under the provision of law under which the regulatory review period occurred; or

(ii) Under the process claimed in the patent when the patent claims a method of manufacturing the product that primarily uses recombinant deoxyribonucleic acid (DNA) technology in the manufacture of the product;

(3) For animal drug products, determining whether the permission for commercial marketing or use of the product after the regulatory review period:

(i) Is the first permitted commercial marketing or use of the product; or

(ii) Is the first permitted commercial marketing or use of the product for administration to a food-producing animal, whichever is applicable, under the provision of law under which the regulatory review period occurred;

(4) Informing the U.S. Patent and Trademark Office whether the patent term restoration application was submitted within 60 days after the product was approved for marketing or use, or, if the product is an animal drug approved for use in a food-producing animal, verifying whether the application was filed within 60 days of the first approval for marketing or use in a food-producing animal; and

(5) Providing the U.S. Patent and Trademark Office with any other information relevant to the U.S. Patent and Trademark Office's determination of whether a patent related to a product is eligible for patent term restoration.

(b) FDA will notify the U.S. Patent and Trademark Office of its findings in writing, send a copy of this notification to the applicant, and file a copy of the notification in the docket established for the application in FDA's Dockets Management Branch (HFA-305), rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

4. Section 60.22 is amended by revising paragraph (b)(1), by redesignating existing paragraph (d) as paragraph (f), by adding new paragraphs (d) and (e), and by removing the period at the end of newly redesignated paragraph (f) and adding the following text to read as follows:

§ 60.22 Regulatory review period determinations.

(b) * * *

(1) The testing phase begins on the date a major health or environmental effects test is begun and ends on the date a petition relying on the test and requesting the issuance of a regulation for use of the additive under section 409

or 706 of the Act is initially submitted to FDA.

(d) For animal drugs:

(1) The testing phase begins on the date a major health or environmental effects test is begun or the date on which the agency acknowledges the filing of a notice of claimed investigational exemption for a new animal drug, whichever is earlier, and ends on the date a marketing application under section 512 of the Act is initially submitted to FDA.

(2) The approval phase begins on the date a marketing application under section 512 of the Act is initially submitted to FDA and ends on the date the application is approved.

(e) For purposes of this section, a "major health or environmental effects test" may be any test which:

(1) Is reasonably related to the evaluation of the product's health or environmental effects, or both;

(2) Produces data necessary for marketing approval; and

(3) Is conducted over a period of no less than 6 months duration, excluding time required to analyze or evaluate test results.

(f) * * * or, in the case of a new animal drug in a Category II Type A medicated article, on the date of publication in the *Federal Register* of the notice of approval pursuant to section 512(i) of the Act. For purposes of this section, the regulatory review period for an animal drug shall mean either the regulatory review period relating to the drug's approval for use in nonfood-producing animals or the regulatory review period relating to the drug's approval for use in food-producing animals, whichever is applicable.

Dated: November 19, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 92-28716 Filed 11-25-92; 8:45 am]

BILLING CODE 4160-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

21 CFR Part 1404

Final Rule Regarding Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

AGENCY: Office of National Drug Control Policy.

ACTION: Final rule.

SUMMARY: On February 18, 1986, President Reagan issued Executive Order 12549, which requested the Office of Management and Budget (OMB) to develop guidelines for nonprocurement debarment and suspension. OMB published guidelines in the *Federal Register* on May 26, 1987, and a final governmentwide common rule (the "Common Rule") was published by 27 agencies in the *Federal Register* on May 26, 1988. Six additional agencies published the Common Rule in the *Federal Register* on January 30, 1989. On May 25, 1990, the Common Rule was amended to implement the terms of the Drug-Free Workplace Act of 1988.

From its inception in January 1989, the Office of National Drug Control Policy (ONDCP) has had no authority to make grants to State and local entities. Consequently, ONDCP never adopted the Common Rule. The Executive Office Appropriations Act of 1993, however, authorizes ONDCP to make such grants.

This final rule is identical to the Common Rule, and describes the procedures ONDCP will follow in debarment or suspending grant recipients.

EFFECTIVE DATE: This regulation is effective November 27, 1992.

FOR FURTHER INFORMATION CONTACT:

Matthew C. Ames, Office of the General Counsel, Office of National Drug Control Policy, Washington, DC 20500, (202) 467-9840.

SUPPLEMENTARY INFORMATION:

Background

The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, Public Law 100-690, 21 U.S.C. 1501 *et seq.* (the "Anti-Drug Abuse Act"), and was charged with the development and coordination of national policy toward illegal drugs. The Anti-Drug Abuse Act authorized ONDCP to establish High Intensity Drug Trafficking Areas (HIDTAs) to improve coordination among Federal, State and local law enforcement agencies and increase Federal resources devoted to combatting drug trafficking in the HIDTAs.

The Executive Office Appropriations Act of 1993, Public Law 102-393, 106 Stat. 1729, 1741 (the "Appropriations Act"), requires ONDCP to transfer funds appropriated for the HIDTAs to applicable agencies within 90 days of the enactment of the Appropriations Act. Until the Appropriations Act became law, ONDCP had no authority to make grants to State or local governments, and consequently had never issued debarment, suspension, or

drug-free workplace regulations. If it is to comply with the 90-day limit imposed by the Act, however, ONDCP must issue such regulations immediately.

Consequently, this final rule, which is identical to the common rule published at 53 FR 19160 on May 26, 1988, amended at 55 FR 21681 on May 25, 1990 (the "Common Rule"), and adopted by all other Federal agencies and departments with grant-making authority, is effective November 27, 1992.

Justification for Lack of Notice

The Administrative Procedure Act requires agencies to give the public notice before a rule takes effect, unless the agency shows that it has good cause to do otherwise. ONDCP believes that there is good cause to invoke this exception in this instance, for two reasons. First, the Congress has imposed the time limitation referred to above, which makes it imperative for ONDCP to act quickly. Second, the rule is identical to the Common Rule, which has been adopted by 32 other Federal agencies, and has been in effect for several years. The public has already received ample notice of the rule's terms, and has had the opportunity to comment. Therefore, ONDCP has decided, for good cause under 5 U.S.C. 553(b)(B), not to publish a proposed rulemaking, and to join the governmentwide final common rule.

List of Subjects in 21 CFR Part 1404

Drug traffic control, Grants administration, Grants programs.

For the reasons set out in the preamble, Title 21, Chapter III, of the Code of Federal Regulations is amended by adding a new part 1404 to read as follows:

PART 1404—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—General

- Sec.
1404.100 Purpose.
1404.105 Definitions.
1404.110 Coverage.
1404.115 Policy.

Subpart B—Effect of Action

- 1404.200 Debarment or suspension.
1404.205 Ineligible persons.
1404.210 Voluntary exclusion.
1404.215 Exception provision.
1404.220 Continuation of covered transactions.
1404.225 Failure to adhere to restrictions.

Subpart C—Debarment

- 1401.300 General.
1404.305 Causes for debarment.
1404.310 Procedures.
1404.311 Investigation and referral.
1404.312 Notice of proposed debarment.
1404.313 Opportunity to contest proposed debarment.
1404.314 Debarring official's decision.
1404.315 Settlement and voluntary exclusion.
1404.320 Period of debarment.
1404.325 Scope of debarment.

Subpart D—Suspension

- 1404.400 General.
1404.405 Causes for suspension.
1404.410 Procedures.
1404.411 Notice of suspension.
1404.412 Opportunity to contest suspension.
1404.413 Suspending official's decision.
1404.415 Period of suspension.
1404.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

- 1404.500 GSA responsibilities.
1404.505 ONDCP responsibilities.
1404.510 Participants' responsibilities.

Subpart F—Drug-Free Workplace Requirements (Grants)

- 1404.600 Purpose.
1404.605 Definitions.
1404.610 Coverage.
1404.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1404.620 Effect of violation.
1404.625 Exception provision.
1404.630 Certification requirements and procedures.
1404.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

Appendix A to Part 1404—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Appendix B to Part 1404—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Appendix C to Part 1404—Certification Regarding Drug-Free Workplace Requirements

Authority: Executive Order 12549, 3 CFR, 1986 Comp., p. 189; 5 U.S.C. 301; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D, 102 stat. 4304; 41 U.S.C. 701 et seq.).

Subpart A—General

§ 1404.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities.

Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 1404.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 1404.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final

determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction*. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment*. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official*. An official authorized to impose debarment. The debarring official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

(h) *Indictment*. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible*. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings*. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List*. The portion of the List of Parties Excluded from Federal Procurement or Nonprocurement Programs compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice*. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer

of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant*. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person*. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: Foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence*. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal*. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

- (1) Principal investigators.

(q) *Proposal*. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent*. A person against whom a debarment or suspension action has been initiated.

(s) *State*. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official*. An official authorized to impose suspension. The suspending official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

(u) *Suspension*. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded*. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

§ 1404.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction*. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction*. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: Grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction*. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C.

253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

- (1) Principal investigators.
- (2) Providers of federally-required audit services.
- (2) *Exceptions.* The following transactions are not covered:
 - (i) Statutory entitlements or mandatory awards (but not subtler awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;
 - (ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;
 - (iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);
 - (iv) Federal employment;
 - (v) Transactions pursuant to national or agency-recognized emergencies or disasters;
 - (vi) Incidental benefits derived from ordinary governmental operations; and
 - (vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 1404.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 1404.110(a). Sections § 1404.325, "Scope of debarment," and § 1404.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 1404.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 1404.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 1404.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 1404.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

- (1) Statutory entitlements or mandatory awards (but not subtler awards thereunder which are not themselves mandatory), including

deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 1404.205 Ineligible persons.

Persons who are ineligible, as defined in § 1404.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 1404.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 1404.315 are excluded in accordance with the terms of their settlements. The Office of National Drug Control Policy (ONDCP) shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 1404.215 Exception provision.

ONDCP may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 1404.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 1404.505(a).

§ 1404.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and

participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 1404.215.

§ 1404.225 Failure to adhere to restrictions.

Except as permitted under § 1404.215 or § 1404.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 1404.300 General.

The debarring official may debar a person for any of the causes in § 1404.305, using procedures established in § 1404.310 through § 1404.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 1404.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of § 1404.300 through § 1404.314 for:

(a) Conviction of or civil judgment for:

- (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

- (2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

- (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

- (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

- (1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

- (2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

- (3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

- (1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

- (2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 1404.215 or § 1404.220;

- (3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

- (4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1404.315 or of any settlement of a debarment or suspension action; or

- (5) Violation of any requirement of Subpart F of this part relating to providing a drug-free workplace, as set forth in § 1404.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 1404.310 Procedures.

ONDCP shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in § 1404.311 through § 1404.314.

§ 1404.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 1404.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 1404.305 for proposing debarment;

(d) Of the provisions of § 1404.311 through § 1404.314, and any other ONDCP procedures, if applicable, governing debarment decision making; and

(e) Of the potential effect of a debarment.

§ 1404.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1404.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 1404.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose

debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 1404.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, ONDCP may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E of this part).

§ 1404.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. When circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirement of Subpart F of this part (see § 1404.305.(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of § 1404.311 through § 1404.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 1404.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see § 1404.311 through § 1404.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.*

The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.*

The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant*

imputed to other participants in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension**§ 1404.400 General.**

(a) The suspending official may suspend a person for any of the causes in § 1404.405 using procedures established in § 1404.410 through § 1404.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 1404.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 1404.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of § 1404.400 through § 1404.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 1404.305(a); or

(2) That a cause for debarment under § 1404.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 1404.410 Procedures.**(a) Investigation and referral.**

Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decision making process.* ONDCP shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 1404.411 through § 1404.413.

§ 1404.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 1404.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 1404.411 through § 1404.413 and any other ONDCP procedures, if applicable, governing suspension decision making; and

(g) Of the effect of the suspension.

§ 1404.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 1404.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 1404.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in

accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) Additional proceedings necessary.

(1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 1404.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension.

at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 1404.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 1404.325), except that the procedures of § 1404.410 through § 1404.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 1404.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

- (1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;
- (2) The type of action;
- (3) The cause for the action;
- (4) The scope of the action;
- (5) Any termination date for each listing; and
- (6) The agency and name and telephone number of the agency point of contact for the action.

§ 1404.505 ONDCP responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 1404.500(b) and of the exceptions granted under § 1404.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or

participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 1404.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals. Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants.

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to ONDCP if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

Subpart F—Drug-Free Workplace Requirements (Grants)

§ 1404.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 1404.605 Definitions.

(a) Except as amended in this section, the definitions of § 1404.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency or agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 1404.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with

respect to the implementation of drug-free workplace requirements concerning grants.

§ 1404.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 1404.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A)(a)-(g) and/or (B) of the certification (Alternate I to Appendix C); or

(2) Such a member of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 1404.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 1404.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see § 1404.320(a)(2) of this part).

§ 1404.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest.

This exception authority cannot be delegated to any other official.

§ 1404.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in Appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency had designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the

Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 1404.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted:

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within

10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

Appendix A to Part 1404—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification.

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in the transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix B to Part 1404—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the

eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Appendix C to Part 1404—Certification Regarding Drug-Free Workplace Requirements

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of

the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the

conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Bob Martinez,

Director.

[FR Doc. 92-27963 Filed 11-25-92; 8:45 am]

BILLING CODE 3180-02-M

POSTAL SERVICE

39 CFR Part 111

Preparation of Penalty Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule adopts revisions to Domestic Mail Manual (DMM) § 137.2. The final rule eliminates sampling as a method of determining equivalent postage for Federal Government penalty mail and requires direct accountability methods to provide actual, verifiable records of postage use for all penalty mail. This final rule also eliminates the standard penalty indicia currently used for penalty mail that must be sampled or otherwise counted by the sending agency. Minor editorial revisions will be effective in a number of DMM sections.

DATES: Effective Date: October 1, 1993. See **SUPPLEMENTARY INFORMATION** for additional compliance instructions.

FOR FURTHER INFORMATION CONTACT: Thomas E. Dale, Jr. (202) 268-3332.

SUPPLEMENTARY INFORMATION: On March 24, 1992, the Postal Service proposed revisions to the DMM concerning the preparation of official mail and the means of paying postage on that matter. The Postal Service received a total of 43 comments concerning the proposed rule. These included single comments from 28 of the 227 Federal agencies eligible to use penalty mail, 13 comments from state organizations authorized to use penalty mail paid for by a Federal agency, 1 comment from an organization representing these state agencies, and 1 comment from a Federal employee.

After due consideration of the comments received, the Postal Service has decided to adopt the proposed regulations with the changes described below. As noted in Section C, the effective date has been delayed to allow penalty mailers more time to prepare and adjust their mailing operations to the new requirements.

Evaluation of Comments Received

A. Comments Concerning Financial Implications

1. Financial Impact

Twenty commenters mentioned concerns about the financial impact of the proposed ruling. Most comments regarding the financial impact were related to requests for a delayed implementation date or generally expressed concern about perceived cost increases. In three cases, commenters argued that the rule should not be implemented because of its financial impact. The financial comments are categorized into the following seven categories of concern:

a. The cost of obtaining postage meters and related processing equipment (20 comments).

b. The cost of training mailroom and administrative personnel in direct accountability procedures (20 comments).

c. The cost of developing procedures and systems to charge mailing costs directly to the originating department (18 comments).

d. The administrative costs of developing a conversion strategy (15 comments).

e. The cost of additional mailroom personnel (11 comments).

f. The financial impact of destroying remaining envelope stock bearing standard penalty indicia if unusable after the implementation date (9 comments).

g. The cost of redesigning forms used for mailing (3 comments).

2. Additional Costs

While the Postal Service recognizes that there are additional costs in categories 1-a, b, d, and g above, we believe the benefits to the Postal Service and penalty mail users of the new rules far outweigh any costs that will be incurred. In this regard, we also note that agencies that already implemented direct accountability are, in most cases, reporting postage and other savings that more than offset these increased costs. These reductions come through increased use of discount services, more accurate determination of postage, and greater awareness of the cost by employees who make mailing decisions. In summary, direct accountability provides the tools needed to improve mail management in these agencies. Thus, the rationale for requiring direct accountability, as described in the proposed rule, is demonstrated by the financial and other benefits achieved by agencies already converted. The

expected financial benefit for the Federal government and the Postal Service fully justifies the adoption of the proposed rules.

3. Other Categories

Several of the above comment categories are not relevant to the issue of implementing direct accountability:

a. Establishment of a postage chargeback system (category 1-c above) is not a required procedure for direct accountability. However, an internal chargeback procedure has positive benefits for an agency in managing its postage budget and, in the long run, produces significant economies that far exceed its cost.

b. Based on the experience of agencies already converted, additional mailroom staff (category 1-e above) is normally not needed to operate under direct accountability. Consequently, increased staffing costs should not be a significant concern in most cases.

c. Destruction of remaining standard penalty envelopes (category 1-f above) is not necessary since agencies may use existing supplies of standard penalty envelopes and labels after the conversion date. DMM 137.273c provides that "Agencies will have through September 30, 1994, to use existing supplies of standard penalty indicium envelopes by printing penalty meter impressions over the indicia." Post offices must check to ensure that no standard penalty indicium envelopes are mailed without metered postage printed over the indicium. All agencies using penalty mail postage meters may take advantage of this procedure so that they can use any penalty envelope stock remaining for up to 1 year after the required conversion date.

B. Comments Concerning Specific Operational Issues

1. DMM 137.276h(8)(c)—Merchandise Return Service

One commenter requested that the merchandise return regulations be changed so that the annual permit fee and all appropriate postage and handling fees be accumulated at each delivery post office and entered into the Official Mail Accounting System (OMAS) for billing agencies on the regular quarterly cycle.

We agree with this recommendation. The final rule changes DMM 137.276h(8)(c) to 137.276f(8)(c) and provides for billing of merchandise return fees and postage through OMAS.

2. Equipment Availability

One commenter expressed concern that the four meter manufacturers may

not be able to meet the demand for penalty mail meters.

Since none of the meter manufacturers expressed a similar concern and the proposed implementation date is extended for 1 year, we believe the meter manufacturers can readily meet the demand for meter equipment.

3. Cooperative Mailing Programs

One commenter noted that mail services are provided for many agency offices by Cooperative Administrative Support Units (CASUs). The commenter stated that the Postal Service currently accepts only one "type" of mail (i.e., either standard penalty indicia or direct accountability) from a CASU. This commenter inquired as to what policy the Postal Service will employ when some agencies served by a particular CASU have moved to direct accountability while others have not yet converted.

The premise upon which this comment is based is incorrect. There is no policy limiting the type of mail accepted from a CASU. In fact, there are currently a mix of agencies at many CASUs—some on direct accountability, some prepaying their postage using commercial systems, and some using standard penalty indicia. While concerned about the confusion created by these multiple systems, the Postal Service accepts each type of mail from CASUs without restriction. Perhaps the commenter has misunderstood the existing restriction that prohibits individual agencies from using standard penalty indicia at locations where they have a meter.

4. Lack of Backup Equipment

One commenter stated that, as mailrooms convert to direct accountability, there could be instances where backup metering equipment would not be available in the event of meter malfunction. Since existing Postal Service regulations do not permit a mailing location to use standard penalty indicia once a meter is installed at that location, the commenter recommends that this policy be changed to provide for standard penalty indicia stock to be accepted in instances where there is a meter malfunction where no backup metering is available.

The Postal Service believes this exception could result in substantial loss of revenue since effective reporting and financial controls for such a procedure are not feasible. In addition, we do not believe the recommended procedure is needed. At present, 111 agencies have already converted to direct accountability without requiring the requested exception. In addition, many thousands of businesses have

successfully used postage meters without a similar alternative for mailing when meters fail. Agencies converting to the use of meters can continue mailing operations, in the event of meter failure by ensuring that the meter manufacturer has backup meters immediately available, by acquiring backup meters to be kept in key mailrooms, or by using penalty mail stamps to meet their temporary mailing needs in the case of primary meter breakdown.

5. Official Mail Stamps

One commenter stated that the design for penalty mail stamps should be significantly different from commercial stamps, and reasoned that this design differential could aid in internal control by agencies.

The Postal Service already issues penalty mail stamps in a design that readily distinguishes them from stamps in general circulation, and plans to continue to do so. In particular, all penalty mail stamps bear the phrase indicating the penalty for their unauthorized use as well as the wording "Official Mail USA". This phrase is an effective deterrent to prevent unauthorized, nonofficial use by employees of agencies already using penalty mail stamps.

6. Federal Disaster Meters

One commenter requested that the Postal Service permit creation of a special meter indicia not requiring the postmark of the origin post office for use on a localized, temporary basis in the case of emergencies and natural disasters. The mission of the commenting agency requires rapid establishment of temporary offices at disaster sites and this precludes the use of regular penalty meters and penalty mail stamps. The agency proposes use of these special meters at disaster sites for time periods of approximately 1 week or until a regular penalty meter can be placed in service.

The Postal Service agrees that this request for a special emergency meter indicia and related procedures is valid and may be required by several other agencies. Appropriate procedures will be developed in conjunction with the meter manufacturers and interested agencies. Upon completion, the new design will be added to DMM Exhibit 144.41b and appropriate regulations will be added to the DMM.

7. International Postage Meters

One commenter requested that regulations be changed to permit an agency to maintain postage meters in overseas locations so that their mailings

can be returned through State Department facilities. The commenter also requested an exemption from the requirement that meters be licensed in the cities of usage.

At the current time, agencies without meters at overseas locations send their materials back to the United States through the State Department pouch system. Upon arrival at the State Department mail facility at Dulles Airport, the material is forwarded to the agency headquarters where it is metered with domestic postage and placed in the mailstream for delivery. This existing system allows licensing of these meters at the Washington, DC Post Office and affords the Postal Service the necessary financial control over the meters. Where this procedure is not satisfactory, agencies may also use penalty mail stamps in overseas locations.

To protect its revenue, the Postal Service requires periodic examination of all meters and setting by an employee responsible to the Postal Service. We believe it would not be prudent or financially responsible to remove these controls as requested by the commenter. Since a procedure exists for mailing from overseas locations without meters, we will not implement the commenter's request.

8. Penalty Mail Stamps

One commenter requested that the ordering procedures for penalty mail stamps be revised to permit more orders of smaller quantities.

Current regulations state that each order of penalty mail stamps must total at least \$50, and the Postal Service requests that each ordering office restrict orders to one per quarter. It should be noted that the quarterly limit is a request, not a firm regulation that would preclude filling more than one order quarterly from a single mailing location. These regulations were developed to minimize the excessive costs of filling frequent small stamp orders from an agency office. We believe these limitations are reasonable as an effort to hold down administrative costs for both the Postal Service and agencies, and have not received any indication that they have placed an undue burden on agencies already using penalty mail stamps.

Another commenter requested that the Postal Service change the penalty stamp ordering system so that all government offices can order penalty stamps directly from the Stamp Distribution Offices (SDOs). No change is required, since the Postal Service already permits individual government mailing locations to order penalty mail stamps directly from SDOs.

This commenter also requested that, since certain APO/FPO addresses cannot receive registered mail, "other accountable methods" be used for shipping penalty stamps.

The Postal Service agrees that a method is needed to fill stamp orders for APO/FPO locations that cannot receive registered mail. Since current regulations permit use of certified mail to send penalty mail shipments, section 250 of Publication 350, How to Order and Use Official Mail Stamps and Postal Stationery, will be changed to specify that certified mail will be used to send orders of \$500 or less to agency locations. This section will also require Stamp Distribution Offices to reduce orders in excess of \$500 to \$500 or less (in whole units) and to ship the order via certified mail. For shipments to APO/FPO locations that are not subject to registered mail prohibitions and all domestic federal agency locations, § 443.54 of Handbook F-1, Post Office Accounting Procedures, which requires use of registered mail for stamp shipments of more than \$500, will remain in effect.

9. Additional OMAS Billing Services

One commenter requested that post office box service fees, on-site meter setting fees, and meter rental fees due manufacturers be charged through the Official Mail Accounting System (OMAS).

Post office boxes are not considered an official mail service, even when used by Federal agencies. Consequently, it would be inappropriate to handle payment for that service through OMAS.

The Postal Service does not have any indication of a significant demand from the Federal government for billing on-site meter setting fees through OMAS. Since the cost of modifying postal systems to accommodate this request would be substantial and there is not evidence that the service would even be used, we do not believe it appropriate to adopt the proposal.

The proposal for the Postal Service to collect meter rental fees from agencies and transfer those payments to the appropriate meter manufacturer would unnecessarily involve the Postal Service in a business arrangement between the agency and a meter manufacturer. Since this could involve the Postal Service in private matters, it could frequently place the Postal Service in a difficult position. More important, it would result in substantial costs to the Postal Service for systems modification and operations without any significant benefit to any of the parties. Consequently, we do not believe the proposal should be adopted.

10. Postal Service Conversion to Direct Accountability

Two commenters mentioned that, since we are establishing this requirement for other Federal agencies, the Postal Service should also convert to direct accountability mailing methodology.

The primary reason the Postal Service is requiring other agencies to convert to direct accountability is to ensure accurate postage reimbursement. Since the Postal Service does not pay postage to itself, this particular objective is not applicable to its mailings. Another relevant objective for direct accountability is to promote better mail management, including maximizing the volume of automation-compatible mail, eliminating wasteful mailing practices, and encouraging more economical mailing. With respect to automation compatibility, the Postal Service already has a program to prepare all its mail to be automation compatible. It also believes that using direct accountability to hold managers accountable through their budgets for the cost of mailings their organizations generate can be an effective method for encouraging cost control. In this regard, the Postal Service is expanding its own use of direct accountability.

11. DMM 137.253—Cost Code Usage

One commenter recommended that the Postal Service mandate cost code use for each penalty mail postal transaction.

Cost codes are subaccount numbers that may be used on direct accountability postage documents, at agency option, to identify component units of the agency responsible for the transaction. They have no meaning to, and are not used by, the Postal Service. As a service to participating agencies, the Postal Service enters cost codes into the Official Mail Accounting System when provided by the mailing organization. Agencies may use this data, provided on tape by the Postal Service, to track postage costs by component organizations. The Postal Service believes cost codes, when used in this manner, can be effective tool for charging postage costs to the responsible organization and thereby promote better mail management.

However, the decision to use cost codes is an internal management decision for each agency and it would not be appropriate for the Postal Service to mandate or enforce their use. Mandatory use of cost codes could lead to delays in mail acceptance if the cost codes are not placed on the mailing

forms, particularly since the Postal Service cannot advise the customer concerning the correct number or how to determine it. If incorrect or invalid numbers were used, the Postal Service might be drawn into the process of resolving the discrepancy at considerable administrative cost. For these reasons, we will not require use of cost codes by all agencies.

12. Government Printing Office (GPO) Mailings

One commenter requested that the Postal Service establish procedures and controls with the Government Printing Office (GPO) concerning the deposit of agency mail into the mailstream by GPO contractors and their subcontractors and how it is reported to the Official Mail Accounting System.

All mailings for other government agencies by GPO and its contractors/subcontractors have been required to be mailed under direct accountability for over 7 years. Thus, the commenter's recommendation is not an issue that is relevant to this rulemaking. However, the Postal Service will work with GPO and the General Services Administration, which is the agency responsible for government-wide mail management policy, to correct any specific problems with GPO contractor/subcontractor mailings.

13. DMM 137.22—Collection of Postage and Fees

One commenter recommended either deleting the last sentence in this paragraph or identifying specific information that agencies would be required to furnish.

The language in question, which implements 39 U.S.C. 3209, has existed in its current form for many years and is intended to empower the Postal Service to obtain information needed to ensure that agencies pay the proper amount of postage. It is consistent with current law and is still needed. Furthermore, it is not possible to define specific information requirements that would cover every case as suggested by the commenter, and any attempt at a comprehensive listing might force agencies to maintain and submit information which is not required in their particular circumstances. Consequently, this section will not be modified or deleted.

14. DMM 137.273c—Meter Indicum Format

One commenter inquired if the penalty mail statement would still be required as part of the meter stamp imprint.

By statute, all penalty mail must bear a statement describing the penalty for

its unlawful use, along with the words "Official Business" (39 U.S.C. 3203). The Postal Service believes including that statement as an integral part of the meter stamp imprint is the most effective method for meeting this legal requirement on metered official mail. Consequently, the penalty statement will continue to be required as part of the meter stamp imprint for official mail postage meters.

15. DMM 137.275c—Penalty Mail Stamps

One commenter questioned whether penalty mail stamps can be used if the mailing location has a penalty postage meter.

Since penalty mail stamps and penalty postage meters are both direct accountability methods, agencies may use both at the same location.

16. DMM 137.276e(1)(b)—Postage-Due Account

One commenter suggested changing the second sentence of this paragraph to read "In this case, no annual accounting fee is required * * *".

We agree that the addition of the word "accounting" makes the sentence clearer. The word has been added to the text.

17. Express Mail Label Requirements

One commenter proposed a change to the current regulations for Express Mail labels that require the "Official Business" and "Penalty for Private Use * * *" phrases to be preprinted on the label or envelope. The commenter suggested that the regulation be waived since the agencies would no longer have labels with these preprinted phrases after depletion of existing stock.

The law requires these phrases to be printed on all penalty mail (39 U.S.C. 3203). There is no exception for penalty Express Mail. Since this requirement is established by law, the Postal Service cannot waive it for Express Mail labels or any other penalty mailing materials. The requirement can be met if agencies ensure that new labels and envelopes printed for conversion to direct accountability contain the preprinted penalty statement.

C. Comments Concerning Time Frame for Mandatory Conversion to Direct Accountability Mailing Procedures

All commenters stated that the October 1, 1992, implementation date contained in the proposed rule did not provide sufficient time for conversion to direct accountability. Twenty-one commenters recommended specific alternative dates as follows: eight commenters requested October 1, 1993; seven requested October 1, 1994; five

requested October 1, 1995; and one requested October 1, 1996. Although they did not recommend a specific date, the other commenters all requested a delay in implementation.

Based on comments received, the Postal Service agrees that more time is needed for conversion to direct accountability. After consideration of all comments regarding the implementation date, the Postal Service is changing the date for mandatory conversion to direct accountability to October 1, 1993.

The Postal Service also recognizes that there may be operational and financial barriers for some larger agencies that would make it impossible to complete conversion by October 1, 1993. Therefore, the Postal Service will consider requests for an extension of the implementation date for up to 1 year to October 1, 1994. Requests for extension must be sent to the Manager, Accounting, Finance and Planning; U.S. Postal Service Headquarters; 475 L'Enfant Plaza, SW.; Washington, DC 20260-5240 no later than March 31, 1993. The requests must include a written justification for the extension as well as a detailed plan for the agency conversion to direct accountability. The plan submitted with the request must include a schedule of planned conversion activities with beginning and ending dates and provide for conversion to begin during Fiscal Year 1993.

In view of the considerations discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference to the Code of Federal Regulations (see 39 CFR 111.1).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Part 137 of the Domestic Mail Manual is revised as follows:

a. The following sections and exhibits are deleted:

- 137.251e
- 137.252d
- 137.263c
- 137.263c(1)
- 137.263c(2)
- 137.263c(3)
- 137.263c(4)
- 137.264a
- 137.264b
- 137.264c
- 137.264g

137.272	
137.272a	
137.272a(1)	
137.272a(2)	
Exhibit 137.272a(2)	
137.272a(2)(a)	
137.272a(2)(b)	
137.272a(2)(c)	
137.272b	
137.272b(1)	
137.272b(2)	
137.272b(3)	
137.272b(4)	
137.272c	
137.272d	
137.275c	
137.275e	
137.276a(5)	
137.276b	
137.276f	
137.276f(1)	
137.276f(2)	
137.276f(3)	

b. The following sections and exhibits are renumbered but not revised:

137.251e	[former 137.251f]
137.251f	[former 137.251g]
137.252d	[former 137.252e]
137.252e	[former 137.252f]
137.264a	[former 137.264d]
137.264b	[former 137.264e]
137.264c	[former 137.264f]
137.264d	[former 137.264h]
137.268	[former 137.267]
Exhibit 137.272a	[former Exhibit 137.272a(3)]
Exhibit 137.272b	[former Exhibit 137.272a(4)]
Exhibit 137.272c	[former Exhibit 137.272a(5)]
137.275c	[former 137.275d]
137.275c(1)	[former 137.275d(1)]
Exhibit 137.275c(1)	[former Exhibit 137.275d(1)]
Exhibit 137.275c(2)	[former Exhibit 137.275d(2)]
137.275d(2)	[former 137.275f(2)]
137.275d(3)	[former 137.275f(3)]
137.275d(4)	[former 137.275f(4)]
137.275d(5)	[former 137.275f(5)]
137.275d(6)	[former 137.275f(6)]
137.275e	[former 137.275g]
137.275f	[former 137.275h]
137.275g	[former 137.275i]
137.276b	[former 137.276c]
137.276c	[former 137.276d]
137.276d	[former 137.276e]
137.276e	[former 137.276g]
Exhibit 137.276e(2)	[former Exhibit 137.276g(2)]
137.276e(2)(a)	[former 137.276g(2)(a)]
137.276e(2)(b)	[former 137.276g(2)(b)]
137.276e(3)	[former 137.276g(3)]
137.276e(3)(a)	[former 137.276g(3)(a)]
137.276e(3)(b)	[former 137.276g(3)(b)]
137.276e(3)(c)	[former 137.276g(3)(c)]
137.276e(3)(d)	[former 137.276g(3)(d)]

Exhibit 137.276e(3)(d)	[former Exhibit 137.276g(3)(d)]
137.276e(3)(e)	[former 137.276g(3)(e)]
Exhibit 137.276e(3)(e)	[former Exhibit 137.276g(3)(e)]
137.276e(4)	[former 137.276g(4)]
137.276e(5)	[former 137.276g(5)]
137.276f	[former 137.276h]
137.276f(1)	[former 137.276h(1)]
137.276f(2)	[former 137.276h(2)]
137.276f(2)(a)	[former 137.276h(2)(a)]
137.276f(2)(b)	[former 137.276h(2)(b)]
137.276f(3)(a)	[former 137.276h(3)(a)]
Exhibit 137.276f(3)(a)	[former Exhibit 137.276h(3)(a)]
137.276f(3)(b)	[former 137.276h(3)(b)]
Exhibit 137.276f(3)(b)	[former Exhibit 137.276h(3)(b)]
137.276f(4)	[former 137.276h(4)]
137.276f(4)(b)	[former 137.276h(4)(b)]
137.276f(5)	[former 137.276h(5)]
137.276f(9)	[former 137.276h(9)]
137.276f(9)(a)	[former 137.276h(9)(a)]
137.276f(9)(b)	[former 137.276h(9)(b)]
137.276f(10)	[former 137.276h(10)]

c. The following provisions are revised as follows:

137 OFFICIAL MAIL

* * * * *

137.2 Penalty Mail—Executive and Judicial Officers

* * * * *

137.22 Postage and Fees

137.221 Collection. Agencies must reimburse the Postal Service the equivalent amount of postage and fees due for the penalty mail service they receive. As described in 137.27, matter sent as penalty mail must use at least one of the following methods to ensure the accurate assessment of postage: penalty mail postage meters, penalty mail permit imprint and second-class imprint, penalty mail stamps, penalty business reply mail, penalty merchandise return, and penalty Express Mail agency accounts. Instructions governing the manner of reimbursement for penalty mail service are issued and administered by the manager, Accounting, at Postal Service Headquarters. Agencies § authorized to use penalty mail and any contractors authorized to mail for them must promptly furnish, in the manner and form requested, all information the manager considers necessary to ensure accurate measurement of penalty mail

use and adequate budgeting for timely payment.

137.222 Prepayment. Agencies may choose to prepay postage by using regular postage stamps, commercial postage meters, or any other mailing methods available to private-sector mailers, in addition to or instead of the procedures described in 137.221. Mail prepaid in this manner is not penalty mail and must not contain the phrase describing the penalty for its unlawful use.

137.24 Eligibility for Penalty Mail Privileges

* * * * *

137.243 State Employment Security Offices. All mail prepared under 137.273 through 137.276 by state employment security offices cooperating with the U.S. Department of Labor may be sent as penalty mail.

* * * * *

137.25 Authorizations

137.251 General

* * * * *

[Delete 137.251e; renumber current 137.251f-g as 137.251e-f.]

137.252 Agency Authorization Codes, Permit Imprint Numbers, and BRM Permit Numbers. Agency authorization codes, permit imprint numbers, and BRM permit numbers are assigned to authorized penalty mail users by the manager, Accounting. These numbers are valid at any post office, and post offices must not assign local numbers for use on penalty mail. The codes and numbers assigned to each agency authorized to use penalty mail are listed in Exhibit 137.251a. (Bold type reflects changes effected since the preceding issue of the Domestic Mail Manual.)

* * * * *

[Delete 137.252d; renumber current 137.252e-f as 137.252d-e.]

* * * * *

137.26 Services, Classes, Rates, and Preparation Requirements

* * * * *

137.262 Forwarding, Return, and Address Correction Services. Penalty mail on which forwarding, return, or address correction service is requested must be given that service and rated for billing of postage due through OMAS. Post offices must provide agencies with a Form 3582-A, as a record of forwarding, return and address correction charges and must report amounts due each accounting period on Form 3638-G. Summary totals are included in quarterly OMAS reports sent to each agency.

137.263 Mail Preparation

137.263a. General

(5) Endorsements. All penalty mail must bear the proper endorsement for the class or rate at which it is mailed. (See the requirements for the individual classes of mail; 121.44, 137.264, and Chapter 9 for special service endorsements; and 137.274b for penalty permit imprint endorsements.)

137.263b. Discounted Rate Mailings

(1) Penalty Indicia Formats. Discounted rate mailings sent as penalty mail (mailings of any class entitled to a reduced rate based on presort, automation compatibility, walk-sequencing, or destination entry) must be prepared using either penalty postage meters or penalty permit imprints (see 137.273 and 137.274) or, for second-class mail, the penalty second-class imprint (137.277a).

[Delete 137.263c & 137.263c(1)-(4)]

137.264 Special Services. Penalty mail may be endorsed to indicate a special service and is given the indicated service without prepayment of postage and fees, with the following exceptions:

[Delete 137.264a,b,c, and g; renumber current 137.264d-f and h as 137.264a-d.]

137.265 Shortpaid and Unpaid Mail.

The procedures in 146 for handling shortpaid and unpaid mail apply to penalty mail, with the following exceptions:

b. Postage due for shortpaid mail, as well as for unpaid mail received in accordance with 137.266, is charged to the receiving agency through OMAS. Post offices will provide agencies with a Form 3582-A as a record of postage due mail to be charged and must report amounts due each accounting period on Form 3638-G. Summary totals are included in quarterly OMAS reports sent to each agency.

137.266 Postage-Due Mail for Military Units Engaged in Hostile Operations

137.266c Collection of Postage. During periods authorized under 137.266b, post offices must collect postage from the addressee for all mail bearing the special postage-due endorsement in Exhibit 137.266. Compute postage due based on the class endorsement on each piece or, if no class endorsement is provided, First-

Class rates are charged, except that unendorsed mail weighing 16 ounces or over is treated and charged as fourth-class parcel post. Government agencies using penalty mail are billed for this postage due as described in 137.265b. Other addressees must pay in cash postage-due advance deposit accounts under 146.

137.267 Mailing List Services. Agencies may obtain mailing list services outlined in 945 and be billed through OMAS. Charges for these services are reported by the providing office on Form 3638-G and are included in OMAS postage due charges for the quarter the service was provided.

137.27 Penalty Mail Indicia Formats

137.271 General

a. Formats and Methods. There are five separate formats and methods of mailing penalty mail: (1) penalty postage meters, (2) penalty permit imprint, (3) penalty mail stamps, (4) penalty second-class imprint, and (5) penalty reply mail. In addition, there are special procedures for penalty Express Mail and use of INTELPOST services.

Note: The standard penalty indicia format (see Exhibit 137.271a) is NOT an acceptable method for mailing penalty mail. If used by penalty mailers, any articles deposited using this format are treated as unpaid mail. Exhibit 137.271a is to be used only as a reference.

[Renumber current Exhibit 137.272a(1) as Exhibit 137.271a.]

137.271b. Items Carried Outside U.S. Mail. All penalty mail matter must conform to the requirements described in 137.273 through 137.277. Envelopes and labels prepared according to these requirements may be used only to transmit penalty mail, and must not be used on items carried outside the U.S. Mail, except:

137.271c. Postage Prepaid. Agency mail not sent by penalty methods as provided in 137.273 through 137.277 must have postage prepaid under 137.23.

[Delete current title of 137.272—"Standard Penalty Indicia." Delete 137.272a; delete 137.272a(1) and 137.272a(2)(a)-(c); delete Exhibit 137.272a(2); renumber current Exhibits 137.272a(3)-(5) as Exhibits 137.272a-c; delete 137.272b(1)-(4); renumber current 137.272b(5) as 137.272; delete 137.272c and 137.272d.]

137.272 [former 137.272b(5)] Postal Service Mail. Postal Service penalty mail must have preprinted in the upper left corner: (a) the name and complete return address (mailing address, including ZIP+4) of the postal facility, (b) the words "Official Business," and

(c) the Postal Service symbol immediately to the left of the return address. In the upper right corner, the postal indicium must appear with the penalty statement to its left. A facing identification mark (FIM) pattern B must appear on letter-size mail (see Exhibit 137.272a), except prebarcoded ZIP+4 letter-size mail, which must carry a FIM pattern C (see 137.272c). The Postal Service may distribute penalty envelopes, cards, cartons, and labels preaddressed to the Postal Service may distribute penalty envelopes, cards, cartons, and labels preaddressed to the Postal Service for use by persons or organizations from whom or through whom official mail is desired (see 137.272b).

137.273 Penalty Meters

137.273c. Meter Indicia Format. Special penalty mail meter stamp designs prescribed for metered penalty mail in 144.41b must be placed in the upper right corner of the mailpieces. Envelopes used with a penalty postage meter must not contain printing, other than the meter indicium, in the area where the meter stamp is to be applied. The complete return address (agency name and mailing address) must appear in the upper left corner of each mailpiece. The preprinted words "Official Business" must appear immediately below the return address. Agencies will have through September 30, 1994, to use existing supplies of standard penalty indicium envelopes by printing penalty meter impressions over the indicia. Post offices must check to ensure that no standard penalty indicium envelopes are mailed without metered postage printed over the indicium.

137.273j. Mailings. Penalty meter imprints should indicate the correct postage, including any applicable special service or surcharge for the class and weight of the mailpiece. Penalty metered mail with insufficient postage imprinted must be handled in accordance with 146.13. If envelopes and labels designed for penalty meter use are found in the mail without a penalty meter stamp, they must be handled in accordance with 146.12.

137.274 Penalty Permit Imprint Mail

137.274b. Indicia Requirements. The penalty permit imprint indicium must appear in a rectangular box in the upper right corner of the mailpiece. The penalty permit imprint indicium must

include the words "Postage and Fees Paid," the agency name, and the agency's assigned penalty permit imprint number in Exhibit 137.251a, or another penalty permit imprint number authorized by the manager, Accounting. The permit number must always be preceded by the letter "G." In addition, the class of mail or appropriate rate endorsement must appear either as the first item within the permit imprint (the preferred position) or immediately below or to the left of the permit imprint. (Rate endorsements for certain rate categories may also appear directly above the top line of the address; see the requirements for the individual classes of mail.) The city of mailing, amount of postage, and weight of the piece may be included within the permit imprint but are not required. First-Class penalty permit imprints may also show the date. Examples of the penalty permit imprint indicium are provided in 145.42b, c, and d. The complete return address (agency name and mailing address) must appear in the upper left corner. The preprinted words "Official Business" and "Penalty for Private Use, \$300" must appear immediately below the return address. The penalty statement must not be handwritten or typewritten.

137.275 Penalty Mail Stamp

a. Use. Penalty mail stamps may be used by agencies at any mailing location.

[Delete 137.275c; renumber current 137.275d as 137.275c; renumber current 137.275d(1)-(2) as 137.275c(1)-(2); renumber current Exhibits 137.275d(1) and 137.275d(2) as Exhibits 137.275c(1) and 137.275c(2).]

137.275c. [former 137.275d] Format. 137.275c(1) [former 137.275d(1)] Adhesive Stamps. Penalty mail adhesive stamps must be firmly affixed in the upper right corner of the address side of the mailpiece. The complete return address of the Government agency (agency name and mailing address) must appear in the upper left corner of the address side of the mailpiece. The preprinted words "Official Business" must appear immediately below the return address (see Exhibit 137.275c(1)).

137.275c(2) [former 137.275d(2)] Stamped Stationery. The complete return address of the Government agency (agency name and mailing address) must appear in the upper left corner of the address side of the mailpiece. The preprinted words "Official Business" and "Penalty for Private Use, \$300" must appear

immediately below the return address (see Exhibit 137.275c(2)).

[Delete 137.275e; renumber current 137.275f as 137.275d; renumber current 137.275f(1)-(6) as 137.275d(1)-(6).]

137.275d. [former 137.275f] Ordering Procedures. Departments and agencies authorized in Exhibit 137.251a to use penalty mail may order penalty mail stamps as follows:

137.275d(1) [former 137.275f(1)] Orders for penalty mail stamp stock other than personalized envelopes must be submitted to the stamp distribution office (SDO) serving the ZIP Code area to which the stamp stock is to be shipped on a properly completed Form 17-G. More specific information on ordering penalty mail stamps is available from Publication 350, How to Order and Use Penalty Mail Stamps and Postal Stationery. Orders for personalized envelopes must be submitted on Form 17-J, to the Stamped Envelope Unit, U.S. Postal Service (for address, see address list in Appendices).

[Renumber current 137.275g-i as 137.275e-g.]

137.276 Penalty Reply Mail

a. Restriction to Approved Formats. Agencies may distribute penalty envelopes, cards, cartons, or labels to any person, concern, or organization from whom or through whom official matter is desired by:

(1) Using the penalty business reply format provided by 137.276e.

(2) Using the penalty metered reply format provided by 137.276c.

(3) Affixing penalty mail adhesive stamps or using penalty mail stamped stationery as provided in 137.276d.

(4) Using the penalty merchandise return label as provided in 137.276f.

[Delete 137.276a(5); delete 137.276b; renumber current 137.276c as 137.276b; renumber current 137.276d as 137.276c; renumber 137.276e as 137.276d; delete 137.276f; delete 137.276f(1)-(3); renumber current 137.276g as 137.276e.]

137.276e. [former 137.276g] Penalty Business Reply

[Renumber current 137.276g(1)-(5) as 137.276e(1)-(5); renumber current Exhibits 137.276g(2), 137.276g(3)d, and 137.276g(3)(e) as Exhibits 137.276e(2), 137.276e(3)(d), and 137.276e(3)(e).]

(1) General

(a) BRM Account. The agency indicates it wishes to establish a BRM account at a post office and is billed an annual BRM accounting fee through OMAS. The appropriate postage and a handling fee for each piece of BRM returned is reported by post offices on Form 3630-G, and the agency is billed

through OMAS. This option minimizes the postage charges when the returned BRM volume is high and must be used when agencies used the Business Reply Mail Accounting System (BRMAS) as provided in 917.14.

(b) Postage-Due Account. When an agency indicates it does not wish to establish a BRM account, payment is handled through a penalty mail postage due account. In this case, no annual accounting fee is required but a higher handling fee per piece is charged. Postage and a handling fee for each piece of BRM returned are reported on Form 3630-G and the agency is billed through OMAS. This option minimizes the postage charges when lower volumes of BRM are returned.

137.276e(5) [former 137.276g(5)] Paying BRM Postage and Fees.

137.276e(5)(b) [former 137.276g(5)(b)] Postage-Due Account Option. Under this option, the delivering post office must submit Form 3582-A to serve as a record of postage and fees due for returned BRM. Each accounting period, post offices must report summary postage-due account activity through OMAS. Postage activity under this option is included in a quarterly OMAS report as postage-due charges. It does not appear under BRM postage.

137.276f. [former 137.276h] Penalty Merchandise Return.

(2) Application

137.276f(2)(c) [former 137.276h(2)(c)] The agency must renew the permit by the expiration date by providing the post office with a renewal request letter that contains up-to-date local contact information for the agency.

137.276f(3) [former 137.276h(3)] Label Format. The one-part merchandise return labels available for use by Federal Government agencies must bear the address of one of the authorized agencies listed in Exhibit 137.251a or one of their components. See Exhibit 137.276f(3)(a) for the format required when no special services are requested or when insurance and/or special handling are requested and Exhibit 137.276f(3)(b) when registered service without postal insurance is requested. The label must be printed in the format required by 919.5, with the following exceptions:

[Renumber current Exhibits 137.276h(3)(a) and 137.276h(3)(b) as 137.276f(3)(a) and 137.276f(3)(b).]

137.276f(4) [former 137.276h(4)]**Special Services—Insurance**

137.276f(4)(a) [former 137.276h(4)(a)] Only the permit holder may request that the mailpiece be insured. In order to do so, the permit holder must preprint the endorsement specified in 137.276f(4)(c).

137.276f(4)(c) [former 137.276h(4)(c)] The format in Exhibit 137.276f(3)(a) must be used for the merchandise return label. To request insurance, the agency must preprint the following endorsement to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement:

Insurance Desired by Permit Holder for \$_____

(value)

The value portion of the endorsement (\$100 or less) may be handwritten by the permit holder. The permit holder must indicate the specific dollar amount of insurance applicable to the article in the value portion of the endorsement.

137.276f(5) [former 137.276h(5)]**Special Services—Registered Mail.**

137.276f(5)(a) [former 137.276h(5)(a)] Only the permit holder may request registered mail service. In order to do so, the permit holder must preprint the endorsement required in 137.276f(5)(c). Registered mail service may be obtained only on articles returned at First-Class or Priority Mail rates.

137.276f(5)(b) [former 137.276h(5)(b)] Only registered mail service without postal insurance is available under penalty mail merchandise return procedures. Agencies desiring to register merchandise return articles with postal insurance must follow the procedures in 919 and pay postage and fees through an advance deposit account.

137.276f(5)(c) [former 137.276h(5)(c)] When registered mail service is requested for single-piece First-Class (including Priority) Mail, no other special service may be obtained. The format in Exhibit 137.276f(3)(b) must be used for the merchandise return label. The following endorsement must be preprinted to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement:

Registered Mail Service Without Postal Insurance Desired by Permit Holder

137.276f(6) [former 137.276h(6)] **Special Services—Special Handling.** Only the permit holder may request that the mailpiece receive special handling. The format in Exhibit 137.276f(3)(a) must be used for the merchandise return label. Third- or fourth-class items requiring special handling (see 919.41)

must have the following endorsement preprinted or rubber-stamped to the left of and above the "Merchandise Return Label" legend and below the "Total Postage and Fees Due" statement:

Special Handling Desired by Permit Holder

137.276f(7) [former 137.276h(7)] Combining Special Services. Third- and fourth-class parcels may be insured and receive special handling if the mailer so desires and preprints or rubber-stamps the appropriate endorsements and markings for both special services as required in 137.276f(4) and (6).

137.276f(8) [former 137.276h(8)]**Payment of Postage and Fees.**

137.276f(8)(a) [former 137.276h(8)(a)] Agencies are charged the annual merchandise return permit fee for each post office to which merchandise return matter is returned.

137.276f(8)(b) [former 137.276h(8)(b)] The amount to be paid for penalty mail merchandise return matter is the appropriate postage for the class of service requested, plus the transaction fee prescribed in 919, for each returned item. The registered fee, special handling fee, or insurance fee is additional, where applicable.

137.276f(8)(c) [former 137.276h(8)(c)] Postage and fees, including the annual permit fee, will be billed through OMAS on Form 3639-G.

137.276f(9) [former 137.276h(9)] **Cancellation of Permit.** A permit may be canceled by the manager, Accounting, for any violation of postal regulations, including, but not limited to:

137.276f(9)(c) [former 137.276h(9)(c)] Failure to renew permit under 137.276f(2)(c).

137.277 Procedures for Other Categories of Penalty Mail**a. Penalty Second-Class Mail.**

137.277b. **Penalty Express Mail.** Agencies has the same service and contract options as other mailers when sending penalty Express Mail. A description of the available services is contained in Chapter 2. The procedures for preparing penalty Express Mail service are explained in Handbook DM-201, Express Mail Service, 620. Postmasters should be consulted before the start of service. Express Mail may be sent using penalty postage meters, penalty mail stamps, or Express Mail agency accounts. Agencies desiring to use Express Mail agency accounts must request authorization from the manager, Accounting.

Note: Agencies may also prepay postage for Express Mail (i.e., not use penalty mail procedures) in accordance with 137.23).

137.28 Contractors

137.281 **Reimbursement.** Agencies authorized in Exhibit 137.251a to use penalty mail may authorize contractors to mail for them and must reimburse the Postal Service for contractor use of penalty mail services. Agencies must promptly furnish, in the manner and form requested, all information concerning contractor use of penalty mail services that the manager, Accounting, considers necessary to ensure accurate reimbursement to the Postal Service.

137.282 **Use of Penalty Indicia Formats.** Contractor mailings must meet the following requirements:

137.282d. Express Mail must be prepared with penalty postage meters, penalty mail stamps, or Express Mail agency accounts as described in 137.277b.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the *Federal Register* as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative Division.

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GENERAL SERVICES ADMINISTRATION**41 CFR Part 201-38****Management of Telecommunication Resources****CFR Correction**

In title 41 of the Code of Federal Regulations, chapter 201 to end, revised as of July 1, 1992, on page 48, part 201-38 consisting of §§ 201-38.000 through 201-38.017 and reserved subpart 201-38.1 was inadvertently removed with subpart 201-38.2 consisting of §§ 201-38.200 through 201-38.207-3 at 55 FR 30710, July 27, 1990. Part 201-38 should be reinstated to read as follows:

PART 201-38—MANAGEMENT OF TELECOMMUNICATION RESOURCES

- Sec.
- 201-38.000 Scope of part.
 - 201-38.001 General. [Reserved]
 - 201-38.002 Planning.
 - 201-38.003 Controlling and reviewing.
 - 201-38.004 Privacy.
 - 201-38.005 Security.
 - 201-38.006 Standards.
 - 201-38.007 Policies on the use of telecommunications services.
 - 201-38.007-1 Authorized use of Government telephone systems.
 - 201-38.007-2 Abuse by employees.
 - 201-38.007-3 Prohibitions.
 - 201-38.007-4 Collections.
 - 201-38.007-5 Privacy Act considerations.
 - 201-38.007-6 Agency responsibilities.
 - 201-38.007-7 Delegation of authority.
 - 201-38.008 Use of toll-free telephone services.
 - 201-38.008-1 Agency responsibilities.
 - 201-38.008-2 GSA responsibilities.
 - 201-38.009 Accessibility for hearing and speech impaired individuals.
 - 201-38.010 Analysis of data communication requirements. [Reserved]
 - 201-38.011 Agency surveys and inventories of telephone station equipment.
 - 201-38.011-1 Guidelines.
 - 201-38.012 Use of functional telecommunications system specifications.
 - 201-38.013 [Reserved]
 - 201-38.014 Telecommunication requirements.
 - 201-38.014-1 Submission of requirements to GSA.
 - 201-38.014-2 GSA actions.
 - 201-38.014-3 Review of proposed determinations by the Office of Management and Budget.
 - 201-38.015 Competition.
 - 201-38.016 Acquisition policies.
 - 201-38.017 GSA provided service through the FTS.

Subpart 201-38.1—[Reserved]

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and Sec. 101(f), 100 Stat. 1783-345 and 2128; 40 U.S.C. 751(f).

Source: FIRM Amdt. 1, 50 FR 4393, Jan. 30, 1985, unless otherwise noted.

§ 201-38.000 Scope of part.

This part prescribes policies and procedures for the management of telecommunication resources.

§ 201-38.001 General. [Reserved]**§ 201-38.002 Planning.**

Agencies shall follow applicable provisions of Part 201-16 in the management of telecommunication resources.

§ 201-38.003 Controlling and reviewing. [Reserved]**§ 201-38.004 Privacy.**

Agencies shall follow applicable provisions of Part 201-6 regarding

telecommunication privacy and related matters. Policies and procedures regarding listening-in or recording telephone conversations are also in Part 201-6.

§ 201-38.005 Security.

Agencies shall follow applicable provisions of Part 201-7 in the management of telecommunication resources.

§ 201-38.006 Standards.

Agencies shall follow applicable provisions of part 201-13 in the management of telecommunication resources.

[FIRM Amdt. 1, 50 FR 4393, Jan. 30, 1985, as amended by FIRM Amdt. 17, 54 FR 37465, Sept. 11, 1989]

§ 201-38.007 Policies on the use of telecommunications services.

The Federal Telecommunications System (FTS) intercity network and other Government-provided long distance telephone services are to be used only to conduct official business; i.e., if the call is necessary in the interest of the Government. (Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 926, Title 31 U.S.C. 1348(b).) These networks are to be used for placement of calls instead of the commercial toll network to the maximum extent practicable. All Government telephone systems represent resources; accordingly, their use must be managed just as any other resource. Supervisors are responsible for the proper management of telephone usage within their jurisdiction. (Note: See the FIRM bulletin series for guidance on the management of long-distance telephone services.)

[FIRM Amdt. 11, 52 FR 42294, Nov. 4, 1987]

§ 201-38.007-1 Authorized use of Government telephone systems.

(a) The use of Government telephone systems (including calls over commercial systems which will be paid for by the Government) shall be limited to the conduct of official business. Such official business calls may include emergency calls and calls which the agency determines are necessary in the interest of the Government. No other calls may be placed (except in circumstances identified in paragraphs (b) and (d) of this § 201-38.007-1), even if the employee's intention is to reimburse the Government for the cost of the call.

(b) Use of Government telephone systems may properly be authorized as being necessary in the interest of the Government if such use satisfies the following criteria:

(1) It does not adversely affect the performance of official duties by the employee or the employee's organization.

(2) It is of reasonable duration and frequency, and

(3) It reasonably could not have been made at another time, or

(4) It is provided for in a collective bargaining agreement that is consistent with these regulations, or executed before the effective date of these regulations but continuing only until the term of the agreement expires.

(c) Examples of circumstances that may constitute authorized use, when consistent with these criteria, are set forth in the chart entitled "Examples of Use of Government Telephone Systems That May Be Authorized Provided They Are Consistent With § 201-38.007-1(b)" appearing at the end of this § 201-38.007-1.

(d) Personal calls that must be made during working hours may be made over the commercial long distance network if the call is consistent with the criteria in § 201-38.007-1(b) and is—

(1) Charged to the employee's home phone number or other non-Government number (third number call),

(2) Made to an 800 toll-free number,

(3) Charged to the called party if a non-Government number (collect call), or

(4) Charged to a personal telephone credit card.

CHART

Examples of Use of Government Telephone Systems That May Be Authorized Provided They Are Consistent With § 201-38.007-1(b)

- (1) Calls to notify family, doctor, etc., when an employee is injured on the job.
- (2) An employee traveling on Government business is delayed due to official business or transportation delay, and calls to notify family of a schedule change.
- (3) An employee traveling for more than one night on Government business in the U.S. makes a brief call to his or her residence (but not more than an average of one call per day).
- (4) An employee is required to work overtime without advance notice and calls within the local commuting area (the area from which the employee regularly commutes) to advise his or her family of the change in schedule or to make alternate transportation or child care arrangements.
- (5) An employee makes a brief daily call to locations within the local commuting area to speak to spouse or minor children (or those responsible

for them, e.g., school or day-care center) to see how they are.

- (6) An employee makes brief calls to locations within the local commuting area that can be reached only during working hours, such as a local government agency or physician.
- (7) An employee makes brief calls to locations within the local commuting area to arrange for emergency repairs to his or her residence or automobile.

[FIRMR Amdt. 11, 52 FR 42294, Nov. 4, 1987]

§ 201-38.007-2 Abuse by employees.

Employees should be particularly sensitive to the use of Government telephone facilities under the conditions outlined in § 201-38.007-1. If possible, such calls should be made during lunch, break, or other off-duty periods. Abuse of Government telephone systems, including abuse of the privileges in § 201-38.007-1, may result in disciplinary action in accordance with applicable agency guidelines.

[FIRMR Amdt. 11, 52 FR 42294, Nov. 4, 1987]

§ 201-38.007-3 Prohibitions.

The practices set forth in this § 201-38.007-3 are prohibited. A willful violation may result in criminal, civil or administrative action, including suspension or dismissal. (See 5 CFR 735.205.)

(a) Use of the following services, equipment, or facilities for other than official business, except emergency calls, and calls which the agency determines are necessary in the interest of the Government as provided in § 201-38.007-1:

(1) Federal Telecommunications System (FTS);

(2) Government-provided long distance telephone service, other than FTS; or

(3) A commercial network where the Government pays for the call.

(b) Use of any Government-provided telephone service, equipment or facility for calls permitted by § 201-38.007-1 (b) and (d) that significantly interferes with the conduct of Government business.

(c) Making an unauthorized telephone call with the intent to later reimburse the Government.

(d) Listening-in or recording of telephone conversations except as specified by Subpart 201-6.2.

(e) Use of telephone call detail data in other than an authorized fashion. (See § 201-38.007-5.)

[FIRMR Amdt. 11, 52 FR 42294, Nov. 4, 1987]

§ 201-38.007-4 Collections.

(a) Agencies should collect for any unauthorized calls made by an employee or other person where it is

cost-effective to do so. Each call will be valued and collection made in accordance with paragraph (b) of this § 201-38.007-4, as implemented by the agency. Reimbursing the Government for unauthorized calls does not exempt an employee from appropriate administrative, civil, or criminal action.

(b) Agency collections shall be composed of two parts:

(1) The value of the call based on commercial long-distance rates rounded to the nearest dollar, and

(2) An amount rounded to the nearest dollar to cover the agencies' administrative costs, for example, to determine that the call was unauthorized and to process the collection.

(c) Agencies should determine the appropriate account for depositing the monies collected.

[FIRMR Amdt. 11, 52 FR 42294, Nov. 4, 1987]

§ 201-38.007-5 Privacy Act considerations.

Agencies shall be familiar with the Office of Management and Budget (OMB) "Guidance on the Privacy Act Implications of 'Call Detail' Programs to Manage Employees' Use of the Government's Telecommunications Systems" (52 FR 12990, April 20, 1987).

[FIRMR Amdt. 11, 52 FR 42295, Nov. 4, 1987]

§ 201-38.007-6 Agency responsibilities.

Agencies shall issue directives consistent with §§ 201-38.007 through 201-38.007-5 governing the use of their telephone facilities and services. Agencies with contractor-operated facilities should consider how to apply the implementing directives to those activities. Such directives specifically shall provide for the further definition of calls necessary in the interest of the Government as used in § 201-38.007-1 and shall include procedures for collections. Agencies should not install additional telephones or increase levels of service on existing telephones merely to accommodate circumstances for calls that may constitute authorized use as identified in the chart, "Examples of Use of Government Telephone Systems That May Be Authorized Provided They Are Consistent With § 201-38.007-1(b)" or other circumstances for calls as defined in agency implementing directives.

[FIRMR Amdt. 11, 52 FR 42295, Nov. 4, 1987]

§ 201-38.007-7 Delegation of authority.

The head of each agency may designate subordinates to determine and certify what constitutes a call necessary in the interest of the Government.

[FIRMR Amdt. 11, 52 FR 42295, Nov. 4, 1987]

§ 201-38.008 Use of toll-free telephone services.

For the purpose of the FIRMR, toll-free telephone service is any incoming intercity circuit arrangement that allows the public to make long-distance telephone calls to authorized locations at Government expense. This intercity circuit arrangement includes but is not limited to Inward Wide Area Telephone Service (INWATS or dial 800) and foreign exchange (FX) circuits. The service is usually used for providing or obtaining information concerning Government programs, such as social welfare, disaster aid, veterans affairs, income tax, or health. Intercity toll-free telephone service shall be established only when the service is (a) essential to mission accomplishment; (b) necessary to meet program requirements; or (c) required by statute, Executive order, or other regulation.

§ 201-38.008-1 Agency responsibilities.

(a) The acquisition and management of intercity toll-free telephone services should be centrally managed within executive agencies to the greatest extent practicable. Prior approval of a responsible agency official shall be obtained for the acquisition of toll-free services.

(b) The requirement for intercity toll-free telephone service must be approved by GSA. (See § 201-39.006-2 for justification requirements.)

(c) An annual review of incoming intercity toll-free telephone services shall be conducted in accordance with agency procedures. The results of these reviews shall be retained in agency files. As a minimum, this review shall address—

(1) The need for continuing the service at the same level;

(2) Whether the existing toll-free service is the most cost effective method of satisfying the requirement; and

(3) Whether the intended program objectives are being achieved.

§ 201-38.008-2 GSA responsibilities.

(a) GSA maintains a record of all toll-free service requests. The record lists the name of the agency, reasons for the circuits, type of service, number of circuits, terminations, and cost. This record provides a current, central, Government-wide source for managing, engineering, budgeting, and planning; and for public and congressional inquiries.

(b) GSA will assess the technical and operational efficiency and the cost of the requested toll-free service. The purpose of the assessment is to ensure that the requested service is the most

effective and/or economical arrangement from the standpoint of the Government's interest relative to the specialized requirement.

§ 201-38.009 Accessibility for Hearing and Speech Impaired Individuals.

(a) *Scope.* This section prescribes policies and procedures regarding telecommunications accessibility for hearing and speech impaired individuals.

(b) *General.* Pub. L. 100-542 directs that the Federal telecommunications system be fully accessible to hearing and speech impaired individuals, including Federal employees. The intent of this law is to ensure that all Federal agencies provide telecommunications accessibility to those with hearing and speech impairments who either work for or do business with the Federal Government.

(c) *Policies.* Federal agencies shall provide telecommunications access to hearing and speech impaired individuals for communication with and within the Federal Government. Determinations of need and requirements analyses shall be performed to identify specific deficiencies and requirements to ensure that agency telecommunications facilities are accessible to the hearing and speech impaired. As appropriate, agencies shall include specifications for telecommunications accessibility in agency solicitation documents.

(d) *Procedures.* (1) Specific information regarding telecommunications accessibility for hearing and speech impaired individuals and the requirements of GSA-related programs may be found in the FIRM Bulletin series. Agencies shall consider these guidelines when performing determinations of need and requirements analyses, developing specifications for acquisitions of telecommunications services and equipment, and providing necessary information for the operation of GSA's telecommunications device for the deaf (TDD)-related programs.

(2) Agencies shall publish relevant access numbers for TDD and TDD-related devices in agency telephone directories and provide such agency numbers to GSA for inclusion in the Federal TDD Directory.

(3) Agencies shall display in their buildings or offices the standard logo specified by GSA for indicating the presence of TDD or TDD-related equipment.

[FIRM Interim Rule 3, 54 FR 42303, Oct. 16, 1989]

§ 201-38.010 Analysis of data communications requirements.

Agencies should develop a plan that will ensure adequate service before they lease or purchase any intercity communication facilities. Agency plans and associated actions should be based on the findings of a determination of need and requirements analysis, and a comparative cost analysis.

(a) *Determination of need and requirements analysis.* The acquisition of new or additional telecommunications capabilities shall be based on program needs that flow from mission requirements. These needs may be expressed in the form of deficiencies in existing capabilities, new or changed mission requirements, or opportunities for increased economy and efficiency. In any event, the needs shall be supported by a requirements analysis commensurate with the size and complexity of the need.

(b) *Analysis of alternatives.* A comparative cost analysis shall be performed for each requirement to determine which alternative will meet the user's needs at the lowest overall cost, price and other factors considered, over the system/service life.

(c) *Common use systems.* Agencies shall consider use of available consolidated services. GSA and the Defense Communications Agency (DCA) provide economical communications services to Federal agencies by obtaining resources in bulk quantities from commercial carriers. Economy of scale discounts are available under the DCA's Multiplex service and GSA's Consolidated DATACOM Network, the Federal Telecommunications System (FTS), and through the value added network (VAN) billing program.

[FIRM Amdt. 4, 50 FR 27164, July 1, 1985]

§ 201-38.011 Agency surveys and inventories of telephone station equipment.

(a) To ensure continuing cost-effective use of telephone station equipment, each agency shall make a complete survey annually. Survey documentation shall be retained in the agency's files until superseded. In addition, agencies shall conduct surveys of installed station equipment where major relocations, reorganizations, or staffing changes impact telephone station equipment cost.

(b) Each agency that obtains GSA consolidated service will receive by May 1 of each year a computerized listing of telephone service as posted in GSA records as of March 31. Agencies shall validate this listing. The validated listing shall be returned to the office specified by the serving GSA region not later than June 30 of each year. GSA will

arrange to correct all billing errors as documented by the agency. The errors will be corrected by August 31.

(c) Each agency shall maintain a program to provide for surveys and inventories at those offices not receiving GSA-consolidated service. GSA will provide assistance and training to agencies in developing survey and inventory programs. Upon request and subject to personnel availability, GSA will conduct surveys of major agency-operated systems on a reimbursable basis.

[FIRM Amdt. 1, 50 FR 4393, Jan. 30, 1985, as amended by FIRM Amdt. 4, 50 FR 27164, July 1, 1985]

§ 201-38.011-1 Guidelines.

(a) *Station equipment analysis.* (1) Telephone station equipment and related features shall be determined by a study of agency operational and mission requirements. The study shall include an analysis of all available station equipment options, with mission, goals, and cost being the main considerations in the final selection. The range of alternative station equipment design for an office will be determined by the capabilities of the serving switching system.

(2) Electronic features, including dual tone multifrequency tone signal dialing, can often be used to functionally replace the electromechanical features provided by multiline key telephones. Charges for electronic features vary widely depending on local tariffs for systems leased from tariffed telephone companies and pricing schemes of vendors of nontariffed telephone systems. Only a systematic analysis of alternative station equipment configurations (all key, all single line, or a combination of key and single line) will provide the basis for selection of the best station equipment application.

(3) Mandatory considerations to be used in the selection telephone station equipment are cost, performance, and the features of alternative telephone systems. These considerations should be used in developing cost/benefit studies.

(b) *Restricted features and equipment.*

(1) Features should not be added to existing station equipment without considering the results of the cost/benefit study called for in paragraph (a)(3) of this section.

(2) Auxiliary telephone station equipment and features, including but not limited to automatic dialing equipment, speakerphones, call diverters, automatic ring lines (hot lines), bell chimes, and music on hold, must be justified annually on the basis of mission, goals, and operational need.

Agencies shall establish internal regulations to limit the use of auxiliary equipment and features because these features and ancillary devices can add substantially to cost and provide only occasional benefits.

§ 201-38.012 Use of functional telecommunications system specifications.

(a) Functional telecommunications system specifications shall be used where possible. Agency telecommunications specifications shall not be limited to tariff descriptions. Where applicable, requirements shall be set forth in a manner that will permit all responsible tariff and nontariff suppliers to submit offers.

(b) The fact that a tariffed carrier can provide the required service and/or equipment does not by itself constitute justification to order from the tariffed carrier.

(c) Section 201-40.007 sets forth requirements concerning telecommunications solicitations.

[FIRM Amdt. 4, 50 FR 27165, July 1, 1985]

§ 201-38.013 [Reserved]

§ 201-38.014 Telecommunication requirements.

§ 201-38.014-1 Submission of requirements to GSA.

Agency telecommunications requirements shall be submitted to the General Services Administration (GSA) in accordance with procedures outlined in § 201-39.006 unless the agency requirement is exempt under those provisions. If the agency requirement is exempt under § 201-1.103 or if GSA determines that service, efficiency and the least overall cost to the Government is best achieved through direct agency action, the agency will be authorized to contract to satisfy the requirement and shall follow the procedures specified in §§ 201-11.003-1, 201-11.003-2, and 201-24.304. Costs and other factors that will be considered include all costs of service delivery, administrative and engineering support activities, and service requirements associated with items such as national security emergency preparedness, connectivity, management and control. Service shall include the satisfaction of national security, emergency preparedness, connectivity, management and control in addition to basic service delivery.

[FIRM Amdt. 4, 50 FR 27165, July 1, 1985]

§ 201-38.014-2 GSA actions.

(a) GSA will assess the efficiency, service, and cost of using the Federal Telecommunications System (FTS) and other common user services or systems. If GSA determines that it is in the best

interest of the Government to use common user systems, GSA will make the necessary arrangements. GSA will document the file to show the basis for the determination, with primary emphasis on cost considerations. GSA also may elect to provide telecommunications on behalf of the agency where it determines that this action is economical and in the interest of the Government.

(b) If an agency submits a request to GSA to use an alternative to the FTS for some or all of its voice long distance needs, GSA will assess the efficiency, service, and cost of the proposal. GSA will consider the proposal's total costs to the Government, compared to the total costs to the Government in meeting the agency's needs using (1) the FTS, (2) the lowest cost commercial offerings on the public network, or (3) other alternatives, as applicable. GSA will make a determination for a preferred option within the time periods as specified in §§ 201-39.007.1 and 201-39.007.2, as applicable.

[FIRM Amdt. 4, 50 FR 27165, July 1, 1985]

§ 201-38.014-3 Review of proposed determinations by the Office of Management and Budget.

(a) In the absence of mutual agreement between GSA and the agency concerned, proposed GSA determinations with respect to a specific agency long distance voice telecommunications requirement submission to GSA shall be subject to review and decision by OMB. When these matters are submitted to OMB for resolution, the submitting agency (GSA or the agency concerned) shall submit copies of the submission and all relevant data and information to the other party.

(b) The Administrator of General Services has authorized the Office of Management and Budget (OMB) to review and decide, based on economy, efficiency or service, the manner in which agency requirements referred to in paragraph (a) of this § 201-38.014-3 shall be satisfied.

[FIRM Amdt. 4, 50 FR 27165, July 1, 1985]

§ 201-38.015 Competition.

Agencies shall follow the applicable provisions of part 201-11 in the procurement of telecommunication resources.

§ 201-38.016 Acquisition policies.

Agencies shall follow the applicable provision of part 201-24 in the procurement of telecommunication resources.

§ 201-38.017 GSA provided service through the FTS.

When GSA provides local telephone and/or intercity telephone services to Federal agencies, GSA will assume the responsibility of meeting all agency requirements. Agencies shall notify GSA of any changes desired at these locations through the use of Standard Form (SF) 145. The SF 145 is generally sent to the local GSA supervisor at the serving location. (See part 201-41.)

[FIRM Amdt. 4, 50 FR 27165, July 1, 1985]

Subpart 201-38.1—[Reserved]

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-180; RM-8048]

Radio Broadcasting Services; Houghton, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C2 for Channel 272A at Houghton, Michigan, and modifies the construction permit for Station WAAH(FM) to specify operation on Channel 272C2 in response to a petition filed by Houghton Radio Group of North Carolina, Inc. See 57 FR 39383, August 31, 1992. Canadian concurrence has been received for the allotment of Channel 272C2 at Houghton at coordinates 47-09-43 and 88-35-27. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-180, adopted November 3, 1992, and released November 20, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 272A and adding Channel 272C2 at Houghton.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-28708 Filed 11-25-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

(MM Docket No. 92-182; RM-8047)

Radio Broadcasting Services; St. Charles, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 299A to St. Charles, Minnesota, as that community's first local broadcast service in response to a petition filed by St. Charles Broadcasters. *See* 57 FR 39384, August 31, 1992. The coordinates for Channel 299A at St. Charles are 43-58-24 and 92-04-00. With this action, this proceeding is terminated.

DATES: Effective January 4, 1993. The window period for filing applications for Channel 299A at St. Charles, Minnesota, will open on January 5, 1993, and close on February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-182, adopted November 3, 1992, and released November 20, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW, suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding St. Charles, Channel 299A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-28710 Filed 11-25-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-179; RM-8046]

Radio Broadcasting Services; State College, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 283C3 for Channel 282A at State College, Mississippi, and modifies the construction permit for Station WUMI (FM) to specify operation on Channel 283C3 in response to a petition filed by PDB Corporation. *See* 57 FR 39384, August 31, 1992. The coordinates for Channel 283C3 are 33-24-00 and 88-53-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-179, adopted November 3, 1992, and released November 20, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 282A and adding Channel 283C3 at State College.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-28709 Filed 11-25-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73 —

[MM Docket No. 92-181; RM-8044]

Radio Broadcasting Services; Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 241C2 for Channel 241A at Tomah, Wisconsin, in response to a petition filed by Magnum Radio, Inc., and modifies the construction permit for Station WBOG to specify operation on Channel 241C2. *See* 57 FR 39384, August 31, 1992. The coordinates for Channel 241C2 are 44-01-50 and 90-49-03. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-181, adopted November 3, 1992, and released November 20, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended].

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 241A and adding Channel 241C2 at Tomah.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-28711 Filed 11-25-92; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 57, No. 229

Friday, November 27, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 31 and 32

RIN 3150-AD82

Requirements Concerning the Accessible Air Gap for Generally Licensed Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the safe use of radioactive byproduct material in certain measuring, gauging, and controlling devices. The proposed rule would provide for additional regulatory control over devices with both an accessible air gap and radiation levels that exceed specified values. This action is intended to make it increasingly difficult for personnel to obtain access to the gauge's radiation beam, thereby reducing the frequency and likelihood of unnecessary exposure to plant personnel. This amendment applies both to persons who distribute these special measuring, gauging, and controlling devices under the NRC general license provisions and to persons who use the devices under the NRC's general license.

DATES: The comment period expires March 29, 1993. Comments received after this date will be considered if it is practicable to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on weekdays. Copies of the draft regulatory analysis, as well as copies of the comments received on the proposed rule, may be examined at the NRC

Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3784.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the predecessor to the Nuclear Regulatory Commission (The Atomic Energy Commission) amended its regulations to establish a general license for the use of radioactive byproduct material contained in certain luminous, measuring, gauging, and controlling devices. The general license permitted the use of specially approved devices, designed for safe use by persons not trained in radiation safety, for the purpose of: detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation, leakage, or chemical composition, or for producing light or an ionized atmosphere. Those permitted to use these devices in the conduct of their business under the general license included (1) commercial and industrial firms; (2) research, educational, and medical institutions; (3) individuals; and (4) Federal, State, or local government agencies. This simplified the licensing process so that a case-by-case determination of the adequacy of the licensee's training, experience, and radiation safety program by the regulatory authority was unnecessary.

The practice of using a device under a general license grew over the years. There are currently some 450,000 devices in use by about 35,000 general licensees in non-Agreement States were the NRC licenses and otherwise controls the use of these devices. In Agreement States, where State regulatory agencies control the use of the devices, there are about twice this number of generally licensed devices. In 1989, there were 54 vendors of generally licensed devices licensed by the NRC. There were 76 vendors licensed by Agreement States. The regulatory framework and process have changed little over the past three decades.

Studies conducted by the NRC in 1984, 1985, and 1986 revealed several areas of safety concern about the use of some sealed source devices under general license. Investigators observed that

accountability for some devices was inadequate and that users were frequently unaware of regulations which applied to them. Furthermore, some devices could not be located and final disposition of some devices could not be determined by the user or the NRC.

A follow-up survey of a sample of general licensees possessing gauging devices, laboratory analytic devices, and tritium-activated exit lights containing radioactive byproduct material was completed in 1990. The survey was designed to obtain information about the respondent's knowledge of the regulatory requirements for general licensees, and their practices and procedures concerning maintenance, testing, and disposition of the generally licensed devices. Although a high proportion of the general licensees, particularly gauge licensees, displayed knowledge of the regulatory requirements and compliance with them, the survey indicated the possible need for further regulatory attention in some areas, most notably the possession and use of tritium-activated exit lights.

Based on the results of the earlier studies and the recent survey, the NRC concluded that the general license program should be continued, but with some modification. The possibilities considered included the following:

1. Quality assurance program for vendors;
2. Third-party testing of generally licensed devices;
3. Ultimate disposition of byproduct sources;
4. Upper bound on source size permitted under general license; and
5. Responsibilities and communications.

From these choices, a decision was made in 1990 to proceed by rulemaking with an NRC program for corresponding by mail with general licensees. This program of correspondence by mail is being developed to ensure that the general licensees are aware of and understand the requirements attendant to possession of these devices. This will be accomplished through (1) an initial verification by the NRC of the information regarding the identification of the device and people responsible for the device collected at the time at which the general licensee takes possession of the device, and (2) periodic follow-up by the NRC to remind general licensees of

their regulatory responsibilities and to verify the currency of the information on possession and use of these devices. This communication program will affect approximately 35,000 general licensees who possess an estimated 450,000 devices containing byproduct material. The Notice of Proposed Rulemaking to implement this program was published in the **Federal Register** on December 27, 1991 (56 FR 67011).

The rulemaking presented in this Notice of Proposed Rulemaking, viz., to place an upper bound on the radioactive source size permitted under general license in a gauge device which has an accessible air gap between the source and detector of the device, is another action proceeding from the results of the above studies. The action is intended to make it increasingly difficult for personnel to obtain access to the gauge's radiation beam, thereby reducing the frequency and likelihood of unnecessary radiation exposure to plant personnel. The NRC estimates that there are some 3000 gauges which use a large enough radiation source to be a potential problem. The gauges are in the possession of about 750 general licensees. This action and the program of corresponding with licensees provide the minimum cost-effective improvements needed to respond to the problems identified in the general license program.

Discussion

The gauges identified as needing improved regulatory control are those which both have a somewhat higher radiation level and have been installed so that there is a sufficiently large air gap between the radioactive sealed source and the gauge detector such that an untrained or careless worker could place his or her body directly in the radiation beam. Many gauges contain a small enough quantity of radioactive material so that even with a large air gap no significant radiation exposures would result. However, for those gauges that have both a large air gap and radiation levels that exceed a certain value, the NRC intends to prohibit further distribution under a general license and to convert existing general licenses to specific licenses. Notwithstanding, general licensees who currently possess such gauges would have the option of having the area around those gauges physically modified to eliminate the accessible air gap. General licensees who exercise this option would not be required to become specific licensees. The NRC estimates that the 3000 or so gauges that are the subject of this rulemaking (one-half percent of the general licensed devices)

are used by approximately 750 general licensees (2 percent of the total number of general licensees). The NRC is not considering specifically licensing over 97% of the general licensees and over 99% of the devices. Further, the lower cost option to provide passive controls in lieu of specific licensing, where feasible, is also provided in this proposed rule.

The size of the air gap addressed by this proposed rule is a gap of 45 cm (18 in.) or greater between the radiation source and detector, shaped in such a way so as to allow insertion of a 30 cm (12 in.) diameter sphere into the radiation beam without the removal of any barrier. The proposed rule would define such a gap as an "accessible air gap." The specification is a reasonable limit to restrict access of a person's torso. An air gap which is 45 cm (18 in.) or greater between the source and detector but is enclosed by wire mesh or other barrier would not be considered an "accessible air gap" under this proposed rule provided the barrier is configured so that a 30 cm (12 in.) diameter sphere could not be placed in the radiation beam without the removal of the barrier.

The magnitude of the radiation level of concern which would be addressed by this rule change is 125 millirem per hour or greater at 45 cm (18 in.) from the radiation source with any shutter in the open position. This radiation level specification is based on the scenario of a worker receiving less than 1 hour of direct radiation exposure in a calendar quarter at a distance of 45 cm (18 in.) from the radiation source as a result of unlikely and careless practices. This would result in a quarterly exposure of less than 125 millirem, which is one-tenth the radiation exposure limit for occupationally exposed workers. This corresponds to the dose restriction for general licensees in NRC regulations (10 CFR 32.51(a)(2)(ii)). The 45 cm (18 in.) specification corresponds to a guideline set forth for NRC inspectors that a radiation level must extend 45 cm (18 in.) into an accessible area for it to cause whole body radiation doses. While this guideline would allow part of an individual's body to be exposed to a higher radiation level than that specified while the body is within the 45 cm (18 in.) distance and closer to the source of the radiation, practical considerations dictate that a person would not be situated in the radiation beam next to the radiation source for long periods of time. An exception to this "practical consideration" statement is a situation where individuals enter for cleaning, maintenance, or any other reason, a

vessel on which a radioactive gauge has been installed. If it is possible that the gauge shutter could be left open, exposing the individual who entered the tank, greater radiation exposures could result than are thought reasonable for generally licensed operations. General licensees are not generally trained or equipped to quickly discover a radiation problem which is causing undue radiation exposure of plant workers. That is why the proposed rule in § 31.5(b)(2) would prohibit the use of vessel gauges under general license.

There are some general licensees who at present possess this type of gauge installed in such a way that unnecessary radiation exposure could occur if untrained or careless employees inadvertently placed their bodies in the gauges' radiation beams. General licensees who currently possess these gauges would be required to either obtain a specific license for the gauge and to establish a radiation safety program to restrict and control access to those gauges, or have the area around the gauges physically modified to eliminate the "accessible air gap," and hence not be required to obtain a specific license. Although this physical modification, as with all installation and servicing of the gauge, would need to be performed by a person with a specific license that authorizes him or her to perform this type of activity, the Commission views it as a lower cost alternative to obtaining a specific license.

The Commission intends to modify the Enforcement Policy, 10 CFR part 2, appendix C, at the time of the final rulemaking to address enforcement actions for failure to either obtain a specific license or to physically modify the devices to avoid the need to obtain a specific license. The possession of material without the required specific license is considered under Supplement VI of the Enforcement Policy to be a Severity Level III violation since it involves possession of unauthorized material. Consequently, a civil penalty will be considered for such violation. It is the Commission's intent to provide a separate assessment scheme for these violations should the proposed rule be finalized. It is expected that each source which is possessed in violation of the rule would be subject to a separate assessment of \$600. Except for the identification factor in Section VI.B.2.(a) of 10 CFR part 2, appendix C, this penalty would be assessed without regard to the normal assessment factors in Section VI.B.2. The penalty would be assessed without normally holding an enforcement conference. The written

response required by 10 CFR 2.201 and 2.205 should provide sufficient information for regulatory purposes for this type of violation. The purpose of this penalty process would be to deter violations by making noncompliance with this requirement more expensive than compliance.

Comments From Agreement States

A draft of this proposed rulemaking was provided to the Agreement States for their review and comment. Agreement States are those States which have entered into an agreement with the NRC or its predecessor Atomic Energy Commission to regulate persons within their States who have in their possession byproduct, source, and special nuclear material. This allows NRC to discontinue exercising most regulatory control over radioactive materials used in the State. However, NRC is required to assure that the State program is compatible with the NRC program and is adequate to protect the public health and safety. The Atomic Energy Act of 1954, as amended, authorizes and directs the NRC to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and NRC programs for protection against hazards of radiation will be coordinated and compatible.

Of the 23 Agreement States that acknowledged their receipt of the draft rule for comment, 17 offered specific comments. Those comments have all been considered. None of the States objected to the publication of the proposed rule. Nine of the States agreed that the draft rule treated at least part of the generally-licensed device problem and should be proposed. Five States asked what help would be available to them to identify the gauge installations which require corrective action. The NRC is prepared to share with them the information and search techniques to identify gauge installations in need of corrective action. On the issue of the period of time over which the corrective action on the gauges would be implemented, all the Agreement States commenting urged a shorter time period than the 3 years in the draft NRC notice. Because the time period proposed in the draft notice is based on the licensing/inspection resources available to the NRC for this project, no changes have been made in that schedule. The NRC plans to work with the States, encouraging them to provide advance notice to their licensees of this upcoming action, in order that the Agreement States implementation of compatible new rules restricting accessible air gaps on generally licensed devices could be

completed at the same time as the NRC implementation of its rules.

While the comments of five States supported the criteria for defining "accessible air gap" in the draft rule, seven States commented that further consideration should be given to a more conservative approach in two areas. First, it was suggested that the rule eliminate large tanks with level gauges from the generally licensed device category. The NRC agrees that gauges on large tanks which are manually cleaned from the inside should be specifically licensed and has clarified that position. Second, the suggestion was made to extend the rule to protect body extremities. Based on its decision to effect the minimum cost-effective improvements needed to respond to the problems identified with the general license program, the NRC believes this rule change should be limited to eliminating the potential for radiation exposure of major parts of the body, not extremities. As an example, even assuming a radiation dose rate inside an air gap of 250 mrem/hours, an individual would have to keep a hand in the beam more than 20 hours per year to exceed a dose to the extremities of 5000 mrem per year, one-tenth the dose limit now imposed by 10 CFR Part 20 for occupationally exposed individuals. Based on this consideration, the NRC demurs with regard to extending the rule to protect body extremities.

Of the seven States submitting specific comments on the proposed radiation level in an accessible air gap below which no action would be required, only two States supported the 125 mrem/hr at 45 cm (18 in.) in the draft rule. Several States questioned the NRC's estimate that persons exposed to radiation in an accessible air gap of a gauge would not be so exposed for as much as 1 hour per calendar quarter but provided no rationale for that contrary view. Nonetheless, in the NRC's view, all the characteristics of a gauge serve to limit the time a person could be exposed in an accessible air gap. During normal gauging, the material being gauged is flowing through the air gap, preventing the presence there of any individual. When not operating, the normal condition of the gauge is to have the source shutter closed, shielding any significant radiation from the air gap. Most generally, licensed gauges utilizing radioactive material are designed with a "fail-safe" shutter mechanism which automatically shields most of the radiation when the gauge is not being operated. If the shutter were left open (or if there were no shutter), warnings from the operator and from the warning

labels on the gauge would normally deter any individual from positioning his/her body so as to expose it to radiation. There is little reason to believe that even an untrained worker could easily find a way to expose his/her body to significant radiation levels (except perhaps in conducting normal maintenance inside a large tank) for any significant time.

Two States commented that the radiation level limits should be related to permitted exposures of members of the general public on the basis that individuals who are untrained in radiation safety, even though occupationally exposed, should be considered members of the general public. Other States suggested that the radiation level limits should be related to the definitions of "radiation area" (5 mrem/hr at 30 cm (12 in.)), or "high radiation area" (100 mrem/hr at 30 cm (12 in.)), or to other doses or dose rates which are lower than those proposed in the draft rule on the basis of making the gauge restrictions equal to one of the many existing limits in the NRC's radiation safety standards in 10 CFR part 20, "Standards for Protection Against Radiation." These suggestions relating to consistency with part 20 standards were seriously considered by the NRC and thought to have merit. In the final analysis, however, the NRC has given greater weight to the following practical considerations in recommending that the accessible air gap rule be proposed using the original criterion of 125 mrem per hr at 45 cm (18 in.) from the radioactive source:

1. Based on discussions with manufacturers and users of these gauges, it is the NRC's understanding that most general licensees possess radiation profiles of their gauge environs, provided to them by the gauge installer, which characterizes the gauges in terms of radiation levels produced by the gauge at 45 cm (18 in.). In the NRC's opinion, using a criterion related to the way in which a gauge is characterized is a practical means of distinguishing those gauges that should be specifically licensed from those that can remain generally licensed. If we were to change the distance at which the radiation level criterion is measured so that the relationship between the radiation profile and criteria of this rule is not readily discernible to the general licensee, the radiation profile would lose its value and the general licensee would become more dependent on outside expertise in deciding whether a particular gauge falls within the criteria of this rule.

2. The criterion of 125 mrem per hour at 45 cm (18 in.) from the gauge's radiation source was chosen as a reasonable specification related to a radiation exposure of 500 mrem in 1 year, and to actual gauges which have been distributed under general licenses. The NRC recognizes, however, that other radiation level and other radiation exposure standards could be chosen which are also acceptable. The NRC sees no substantial improvement in changing the criterion from 125 mrem per hour at 45 cm (18 in.) to 100 mrem per hour at 45 cm (18 in.) or to 100 mrem per hour at 30 cm (12 in.) as have been suggested, although these criteria would be acceptable. On the other hand, the other suggestions of radiation level criteria of 5 mrem per hour at 30 cm (12 in.), 2 mrem per hour, and radiation exposure criteria of 50 mrem per year are extremely low for purposes of this rulemaking. However, for the purpose of allowing Agreement States to impose more stringent criteria in their jurisdictions should they wish to do so, the NRC supports Compatibility Division II for this rule.

Invitation to Comment

Comments on the criteria defining the type of gauge requiring better NRC control and the implementation of the proposed amendments are encouraged. Comments are especially solicited on:

1. The proposed use of both the 45 cm (18 in.) dimension and allowing inserting of a 30 cm (12 in.) diameter sphere into the radiation beam as criteria for defining the maximum size of the accessible air gap;

2. The proposed use of 125 millirem per hour at 45 cm (18 in.) from the source as the level of radiation to which a worker could be exposed as the threshold triggering the restrictions of this proposed rule;

3. The need for a grace period between the effective date of the final rule and the date on which particular portions of the rule become effective. It is unclear how long it will take for present users of that type of gauge to react to the restrictions and take some kind of action, either to have the device physically modified to eliminate the accessible air gap, or to apply for and obtain a specific license;

4. The costs that might result from physically modifying the areas around the devices or obtaining specific licenses; and

5. The specification of Compatibility Division II for Agreement State compatibility, which will allow States to set different, more restrictive limits for this rule when it is finalized and subsequently adopted in State

regulations. NRC is particularly interested in comments from manufacturers and distributors on the impacts associated with this level of Agreement State compatibility, and whether this involves matters of interstate commerce.

Finding of No Significant Environmental Impact: Availability

The proposed amendment, if adopted, would not result in any activity that significantly affects the environment. The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The proposed amendments, if adopted by the NRC and as implemented by licensees, would likely result in a potential gain in radiation protection by reducing the frequency and likelihood of unnecessary radiation exposures. It is expected there would be no additional radiation exposure to individuals or the environment from any physical modification of gauges to satisfy the requirements of this proposed rule. The environmental impact assessment forming the basis for this determination is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

The proposed rule amends the information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs (3150-0120, 3150-0028 and 3150-0017), NEOB-3019, Office of

Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-3784.

Regulatory Flexibility Certification

Based on information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. The NRC has adopted size standards that classify a small entity as one whose gross annual receipts do not exceed \$3.5 million. The proposed rule affects about 750 persons using 3000 gauges under this general license. Many of the users would be classified as small entities. If these users were to adopt the regulatory alternative of obtaining a specific license authorizing use of their presently held gauges, the costs, as discussed in the draft regulatory analysis, "Proposed Regulations Concerning Certain Generally Licensed Devices," would be as follows:

1. Application preparation \$1200 (first year only).
2. Renewal application preparation \$400 (every 5 years thereafter).
3. Licensing fee \$500 (first year and every 5 years thereafter).
4. Inspection fee \$1200 (first year and every 5 years thereafter).
5. Annual fee \$1500 (every year, includes \$100 surcharge).
6. Establishing radiation safety program \$7500 (first year only).
7. Maintaining radiation safety program \$2500 (every subsequent year).

Total of \$11,900 for first year; \$6,100 every subsequent fifth year; and \$4,000 for all other years, for an average annual cost over a 15-year period of \$4,807. The 225 licensees who are estimated to already possess a specific license (even though using gauges under a general license) would have a one-time additional cost of \$780 to add the generally-licensed gauges to their specific license. The average cost to

these licensees over a 15-year period would be \$52 per year.

While the nearly \$5000 per year average costs would be significant for some small entities who decide to obtain a specific license, the NRC believes that the economic impact of the proposed requirements would not be significant for a substantial number of small entities because of the alternative available other than becoming a specific licensee. If a person makes the air gap of the gauge inaccessible by any number of means, such as building a barrier around the air gap, locking the area where the air gap exists, or by interlocks where no one can enter the area while the radiation source is in the exposed position, that person would not be required to obtain a specific license. Although this alternative may be impractical in some cases because of the nature of the gauging process, the NRC believes it will be a practical alternative in most cases. The NRC believes that this would subject affected persons to the one-time additional barrier construction costs estimated at \$1700 per facility. Over the 15-year period this would average \$113 per year. The potential gain in radiation protection by reducing the frequency and likelihood of unnecessary radiation exposure significantly outweighs the economic impact on small general licensees.

However, the NRC does not have information indicating how many of the potential 525 general licensees may be prevented from adopting the less costly alternatives for technical reasons. Because of this uncertainty, the NRC is seeking comment from small entities (i.e., small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities which offer comments on how the regulations could be modified to take into account the differing needs of small entities should specifically discuss the following:

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community. Commenters should provide specific information concerning physical barrier construction costs. Commenters should also indicate specific reasons why the physical protection alternative may not be appropriate for them.

(b) How the proposed regulations could be modified to take into account

the differing needs or capabilities of small entities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, a backfit analysis is not required for this proposed rule because these proposed amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 31 and 32:

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

1. The authority citation for part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 is also issued under section 274, 73 Stat. 688 (42 U.S.C. 2021).

For the purposes of section 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 31.5(b) and (c) (1)–(3) and (5)–(9), 31.8(c), 31.10(b), and 31.11(b), (c) and (d) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 31.5(c)(4), and (5), and (8), and 31.11(b) and (e) are issued under sec.

161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 31.5, paragraph (b) is revised and paragraph (e) is added to read as follows:

§ 31.5 Certain measuring, gauging or controlling devices.²

* * * * *

(b) The general license in paragraph (a) of this section:

(1) Applies only to byproduct material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued pursuant to § 32.51 of this chapter or in accordance with the specifications contained in a specific license issued by an Agreement State which authorizes distribution of the devices to persons generally licensed by the Agreement State;

(2) Applies after (3 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE) only to byproduct material contained in a device which has been manufactured and installed (i) So that the air gap between the radiation source and detector of the device is less than 45 cm (18 in.), (ii) So that the air gap of the device would not allow insertion of a 30 cm (12 in.) diameter sphere into the radiation beam of the device without removal of a barrier, or (iii) So that the radiation dose rate in the radiation beam of the device at 45 cm (18 in.) from the radiation source with the device shutters, if any, in the open position does not exceed 125 millirem per hour; and

(3) In the case of byproduct material in a device which has been installed on a vessel such as a pipe or a tank, applies after (3 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE) only if the inside of the vessel does not need to be entered under any foreseeable circumstance by one or more individuals and a casual entry to the vessel is prohibited, or if the air gap between the radiation source and detector of the device is less than 45 cm (18 in.).

* * * * *

(e) Any person who, under a general license, possesses byproduct material in a device which does not qualify after (3 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE) under paragraphs (b)(2) and (b)(3) of this section:

² Persons possessing byproduct material in devices under the general license in § 31.5 before Jan. 15, 1975, may continue to possess, use or transfer that material in accordance with the requirements of § 31.5 in effect on Jan. 14, 1975.

(1) Shall submit an application to the Nuclear Regulatory Commission, as prescribed in § 30.6(b)(2) of this chapter, by (3 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE), for a specific license authorizing possession of that device, and other activities as appropriate; and

(2) Shall, if an application is submitted not later than (30 DAYS PRIOR TO 3 YEARS FROM THE EFFECTIVE DATE OF THE FINAL RULE) in proper form for a specific license or amendment to a specific license, retain his or her general license until a final determination on the application has been reached by the Commission.

3. In § 31.6, paragraph (d) is added to read as follows:

§ 31.6 General license to install devices generally licensed in § 31.5.

(d) The byproduct material is contained in a device which qualifies after (3 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE) under paragraphs (b)(2) and (b)(3) of § 31.5.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

4. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5941).

For the purposes of section 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 32.13, 32.15(a), (c), and (d), 32.19, 32.25(a) and (b), 32.29(a) and (b), 32.54, 32.55(a), (b), and (d), 32.58, 32.59, 32.62, and 32.210 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 32.12, 32.16, 32.20, 32.25(c), 32.29(c), 32.51a, 32.52, 32.56, and 32.210 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 32.51a, paragraph (c) is added to read as follows:

§ 32.51a Same: Conditions of licenses.

(c) Transfer a device containing byproduct material to a person generally licensed under § 31.5 of this chapter only if that device qualifies after (3 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE) under paragraphs (b)(2) and (b)(3) of § 31.5 of this chapter.

Dated at Rockville, Maryland this 20th day of November 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-28757 Filed 11-25-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Chapter IX

Natural Resource Damage Assessments Under the Oil Pollution Act of 1990

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advanced notice of proposed rulemaking, extension of comment period.

SUMMARY: On March 13, 1992 (57 FR 8964), NOAA provided a status report concerning the natural resource damage assessment and restoration regulations required by the Oil Pollution Act of 1990 (OPA) and asked for comments. NOAA has extended the comment period concerning nonuse values several times since the initial comment period. This document further extends that comment period concerning the calculation of nonuse values to December 10, 1992 in response to petitions received from commenters.

DATES: Comments concerning the calculation of nonuse values must be received no later than December 10, 1992.

ADDRESSES: Comments to Randall Luthi, Project Manager, or Linda Burlington, Assistant Project Manager, Office of General Counsel—DART, Room 422, 6001 Executive Boulevard, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Randall Luthi, telephone (202) 377-1400, or Linda Burlington, Office of General Counsel—DART, NOAA, 6001 Executive Boulevard, Room 422, Rockville, Maryland 20852, telephone (301) 227-6332.

SUPPLEMENTARY INFORMATION:

I. Background

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone. Section 1006(e) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to develop regulations establishing procedures for natural resource trustees in the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources covered by OPA. Section 1006(b) provides for the

designation of Federal, State, Indian tribal and foreign natural resource trustees to determine resource injuries, assess natural resource damages (including the reasonable costs of assessing damages), present a claim recover damages and develop and implement a plan for the restoration, rehabilitation replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

NOAA has published six Federal Register Notices, 55 FR 53478 (December 28, 1990), 56 FR 8307 (February 28, 1991), 57 FR 8964 (March 13, 1992) 57 FR 14524 (April 21, 1992), 57 FR 23067, (June 1, 1992) and 57 FR 44347 (September 25, 1992) requesting information and comments on approaches to developing damage assessment procedures. Throughout the comment period, NOAA has received numerous and often conflicting comments concerning the use of the contingent valuation methodology (CVM) in determining nonuse values of natural resources affected by a discharge of oil. In addition, NOAA has received requests to extend the comment period on this issue for short period of time. Through this Notice, NOAA extends the comment period concerning nonuse values through December 10, 1992.

Authority: Sec. 1006(e), Pub. L. 101-380

Dated: November 19, 1992.

Thomas A. Campbell,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 92-28606 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 251

RIN 1510-AA23

Payment of Unclaimed Interest on Certain Awards of the Mixed Claims Commission, United States and Germany

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to remove the regulation governing the payment of unclaimed interest on awards of the Mixed Claims Commission. This regulation is obsolete. No applications for payments have been filed against this fund in at least 5 years by the person[s] entitled thereto. The

effect of this notice is to remove an unnecessary regulation.

DATES: Comments must be submitted on or before December 28, 1992.

ADDRESSES: Comments should be sent to Director, Funds Management Division, Financial Management Service, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Mia Abeya on (202) 874-8740.

SUPPLEMENTARY INFORMATION:

Background

This regulation was issued pursuant to the Settlement of War Claims Act of 1928, 45 Stat. 254, as amended, to establish a trust fund for unclaimed interest on awards of the Mixed Claims Commission. No claims have been made against this fund for at least 5 years by the person[s] entitled thereto. Therefore, this regulation is no longer necessary.

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. The removal of this unused regulation will have little or no effect on the economy or consumers. It is hereby certified that removal of this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The removal of this unused regulation will have little or no effect on small entities. This proposed rule is issued in accordance with 31 U.S.C. 321(b)(1), which describes the Secretary of Treasury's power to issue regulations.

List of Subjects in 31 CFR Part 251

War claims, Germany.

For the reasons set out in the preamble, 31 CFR part 251 is proposed to be removed.

Russell D. Morris,
Commissioner.

[FR Doc. 92-28542 Filed 11-25-92; 8:45 am]

BILLING CODE 4810-35-M

31 CFR Part 253

RIN 1510-AA24

Payment Under the Act of Congress Approved August 30, 1962, on Unpaid Balances of Awards of Philippine War Damage Commission

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to remove the regulation governing the payment of unpaid balances of awards of the Philippine War Damage

Commission. This regulation is obsolete. The time for applying for payment, and making the payment, have passed. The effect of this notice is to remove an unnecessary regulation.

DATES: Comments must be submitted on or before December 28, 1992.

ADDRESSES: Comments should be sent to Director, Funds Management Division, Financial Management Service, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Mia Abeya on (202) 874-8740.

SUPPLEMENTARY INFORMATION:

Background

This regulation was issued pursuant to the Act of August 30, 1962, Public Law 87-616, 76 Stat. 412, as amended, to govern disbursement of payments directed by the Foreign Claims Settlement Commission, which was evaluating unpaid balances of awards made by the Philippine War Damage Commission under title I of the Philippine Rehabilitation Act of 1946. Under § 2 of Public Law 87-616, applications for payment were to be filed by October 30, 1963, and the Foreign Claims Settlement Commission was to take final action by October 30, 1964. No directions for disbursement are currently outstanding, and none are expected. Therefore, this regulation's guidelines for payment are no longer necessary.

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. The removal of this unused regulation will have little or no effect on the economy or consumers. It is hereby certified that removal of this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The removal of this unused regulation will have little or no effect on small entities. This proposed rule is in accordance with § 253.2, which authorizes the withdrawal or amendment of any or all of the provisions of the regulations in this part.

List of Subjects in 31 CFR Part 253

War claims, Philippines.

For the reasons set out in the preamble, 31 CFR part 253 is proposed to be removed.

Russell D. Morris,
Commissioner.

[FR Doc. 92-28541 Filed 11-25-92; 8:45 am]

BILLING CODE 4810-35-M

31 CFR Part 254

RIN 1510-AA25

Payment on Account of Awards and Appraisals in Favor of Nationals of the United States on Claims Against the Government of Mexico

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to remove the regulation governing payments to United States nationals on their claims against the government of Mexico. This regulation is obsolete. No claims have been made in more than 5 years and all efforts to contact all awardholders have been exhausted. The effect of this notice is to remove an unnecessary regulation.

DATES: Comments must be submitted on or before December 28, 1992.

ADDRESSES: Comments should be sent to Director, Funds Management Division, Financial Management Service, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Mia Abeya on (202) 874-8740.

SUPPLEMENTARY INFORMATION:

Background

The regulations governing payments of awards and appraisals due American nationals on their claims against the Mexican government were issued under authority contained in section 161 of the Revised Statutes (5 U.S.C. 22), the act of April 10, 1935 (49 Stat. 149), the Joint Resolution of August 25, 1937 (50 Stat. 783), and the Settlement of Mexican Claims Act of 1942 (56 Stat. 1058; 22 U.S.C. 661-672).

This program has been ongoing since 1943, and all efforts to contact awardholders have been exhausted. Approximately 97 percent of the awardholders have been paid out of the amount that was available for distribution and no payments have been made in more than 5 years. Those that remain unpaid are individuals whose whereabouts are unknown.

This proposed rule is in accordance with § 254.6 which authorizes the revocation or amendment of any section of regulations in this part.

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. The removal of this unused regulation will have little or no effect on the economy or consumers. It is hereby certified that removal of this regulation will not have a significant economic impact on a

substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The removal of this unused regulation will have little or no effect on small entities.

List of Subjects in 31 CFR Part 254.

Foreign claims, Mexico.

For the reasons set out in the preamble, 31 CFR part 254 is proposed to be removed.

Russell D. Morris,

Commissioner.

[FR Doc. 92-28543 Filed 11-25-92; 8:45 am]

BILLING CODE 4810-35-M

31 CFR Part 290

RIN 1510-AA27

Loans to Public or Private Agencies Under the Refugee Relief Act of 1953

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to remove the regulation governing loans to public and private agencies of the United States under the Refugee Relief Act of 1953. This regulation is obsolete because the terms of the Act require the loans to mature not later than June 30, 1963. The effect of this notice is to remove an unnecessary regulation.

DATES: Comments must be submitted on or before December 28, 1992.

ADDRESSES: Comments should be sent to Director, Funds Management Division, Financial Management Service, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Mia Abeya, 202-874-8740.

SUPPLEMENTARY INFORMATION: This regulation was issued pursuant to § 16 of the Refugee Relief Act of 1953 ("Act"), 67 Stat. 406 (August 7, 1953), and E.O. 10487 (September 22, 1953). The Act authorized issuance of special nonquota immigrant visas. It also authorized the Department of the Treasury to make loans to public and private agencies of the United States for use in paying the immigrants' transportation from ports of entry within the United States to their places of resettlement. The loans were restricted to those immigrants with visas issued under the Act. The loans were to mature not later than June 30, 1963. Therefore, this regulation is no longer necessary.

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. The removal of this unused regulation will have little or no effect on the economy

or consumers. It is hereby certified that removal of this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The removal of this unused regulation will have little or no effect on small entities.

The proposed rule is in accordance with § 290.7(c), which authorizes the withdrawal or amendment of any or all of the provisions of the regulations in this part.

List of Subjects in 31 CFR Part 290

Loan programs—social programs, Refugees, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 31 CFR part 290 is proposed to be removed.

Russell D. Morris,

Commissioner.

[FR Doc. 92-28540 Filed 11-25-92; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

Administration for Children and Families

45 CFR Part 233

RIN 0970-AA07

Extension of Medicaid When Support Collection Results in Termination of Eligibility

AGENCIES: Administration for Children and Families (ACF) and Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations implement section 20 of the Child Support Enforcement Amendments of 1984, as amended by section 303(e) of the Family Support Act of 1988, and section 8003 of the Omnibus Budget Reconciliation Act of 1989. The 1984 law extended Medicaid coverage for a period of four months to certain dependent children and adult relatives who become ineligible for Aid to Families with Dependent Children (AFDC) as a result of child or spousal support collected under title IV-D of the Social Security Act (the Act). The regulations are applicable to the AFDC and Medicaid programs in all jurisdictions.

DATES: Comments will be considered if we receive them no later than January 26, 1993.

ADDRESSES: Comments on the proposed AFDC regulations (45 CFR part 233) should be submitted in writing to the Assistant Secretary, Administration for Children and Families, Attention: Mr. Mack Storrs, Director, Division of Policy, Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447 or delivered to the Office of Family Assistance, Administration for Children and Families, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the AFDC contact person identified below.

Comments on the proposed Medicaid regulations (42 CFR parts 435 and 436) should be submitted in writing to the Administrator, Health Care Financing Administration, Department of Health and Human Services, Attention: MB-004-P, P.O. Box 26676, Baltimore, Maryland 21207. Comments may be delivered to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or to Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. Comments will be available for public inspection as they are received, beginning approximately two weeks after publication in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202) 245-7890.

FOR FURTHER INFORMATION CONTACT: AFDC: Mr. Mack Storrs, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401-9289. HCFA: Mr. Marinos T. Svolos, Room 416, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (410) 966-4451.

SUPPLEMENTARY INFORMATION:

Discussion of Statutory Provisions

Under prior law, if a recipient lost eligibility for AFDC as a result of support collections, the recipient also lost categorical Medicaid eligibility. Section 20 of the Child Support Enforcement Amendments of 1984 (Public Law 98-378) amended both the AFDC and Medicaid titles of the Act. Title IV-A (AFDC) was amended by

adding a new paragraph to section 406 of the Act which extends Medicaid eligibility to certain dependent children and relatives who become ineligible for AFDC due to child or spousal support collections under title IV-D, hereafter termed "support," for a period of four (4) consecutive calendar months, beginning with the first month of AFDC ineligibility. Section 406(h) of the Act provides that each dependent child and each relative with whom such a child is living (including the spouse of such relative as described in section 406(b) of the Act), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under Part D, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins.

Section 20 of Public Law 98-378 also amended section 1902(a)(10)(A)(i)(I) to require Medicaid coverage of eligible individuals pursuant to section 406(h) of the Act. Both amendments applied only to those individuals who became ineligible for AFDC on or after August 16, 1984 (date of enactment of Public Law 98-378) and before October 1, 1988, and who received AFDC in at least three of the six months immediately preceding the month of ineligibility.

Section 303(e) of the Family Support Act of 1988 (Public Law 100-485) amended section 20 of the Child Support Enforcement Amendments of 1984 to extend for one year (through September 30, 1989) the authority of this provision. Section 8003 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239) removed the sunset date for section 20, thus making section 20 a permanent provision of the Social Security Act.

Discussion of Proposed Rule Provisions

The proposed rules at 45 CFR part 233 and 42 CFR parts 435 and 436 set forth the circumstances under which individuals become eligible for the four-month period of extended Medicaid coverage.

Under the proposed rules, individuals must have received AFDC in at least three of the six months immediately preceding the month in which AFDC ineligibility begins in order to qualify for the extended Medicaid coverage. Individuals who do not actually receive an AFDC payment for any month because of the rounding of the payment

amount to zero, the recoupment of an overpayment, or the elimination of payments for those who are eligible for amounts less than \$10 are deemed to be AFDC recipients for that month for purposes of determining eligibility for continued Medicaid coverage under this provision.

Continued Medicaid under this provision ends for any individual family member who moves to another State, effective with the month following the month the individual moves to the new State. Although benefits end when an individual moves to another State, eligibility can be reinstated in the State in which he or she was entitled to the extended coverage if the individual reestablishes residence there before the end of the four-month period. It is the Department's view that extended Medicaid benefits are available only in the State in which the family became ineligible for AFDC benefits. This policy is consistent with the Department's interpretation of groups which received extended benefits under sections 1902(e)(1) and 402(a)(37) which clearly linked eligibility for extended benefits to the State in which the family was living the month they became ineligible for AFDC. Under the statute, the extended period is for calendar months, beginning with the month in which the family becomes ineligible for AFDC. If the family members move to another State during these four months, they do not carry the benefit with them. For example, if a family moved to another State in March, the first month of the extended period, and moved back in May, the third month of the extended period, they would be eligible for extended Medicaid benefits for the months of May and June.

States require payments made by absent parents and spouses to be paid directly to the IV-D agency. Nevertheless, recipients occasionally receive title IV-D payments directly. Because current regulations require that these must be turned over to the IV-D agency, we consider direct payments to be support collections for the purposes of this provision. Thus, extended Medicaid coverage will be provided when support payments are received by the eligible assistance unit.

The proposed rules recognize that section 406(h) of the Act provides certain individuals with extended Medicaid if they lose AFDC eligibility *as a result (wholly or partly) of the collection or increased collection of child or spousal support* (emphasis added). This part of the statutory provision could have two possible interpretations. The first is that "collection" refers to any collection.

This would allow extended Medicaid when the child or spousal support collected is unchanged but, when added to some other type of income which has changed, puts an individual over the AFDC payment standard, as well as when the amount of an ongoing support payment is increased. The second interpretation is that "collection" refers to the initial collection and would allow extended Medicaid only when either the collection of child or spousal support is first initiated or when the amount of an ongoing support payment is increased. Under this latter interpretation, which is the one we propose, each case requires some change in the amount of child or spousal support. Both the conference report, H.R. Rep. No. 925, 98th Cong., 2d Sess. 55, and the report of the Committee on Ways and Means, H.R. Rep. No. 527, 98th Cong., 1st Sess. 11, 23, 52, and 56, contemplate a change in child or spousal support itself in order for Medicaid eligibility to be extended; that is, the initiation of support collections or an increase in them. We propose to include this interpretation explicitly in the regulations.

Because the statute requires that AFDC ineligibility occur "as a result (wholly or partly) of" a support collection, the family is entitled to extended benefits if the increase in support payments causes or actively contributes to the AFDC ineligibility. Other changes in income or family circumstances could be occurring which also cause or contribute to the family's ineligibility. However, there must be a causal relationship between the support change and the ineligibility; an increase in child or spousal support during the month a family becomes ineligible does not, in and of itself, result in extended Medicaid eligibility.

The proposed regulations specify that AFDC ineligibility will be considered to be due "wholly" to a support collection when the change in the collection, when considered in isolation, is sufficient to cause ineligibility. The support collection might need to be combined with some other kind of income (which did not increase) in order for the income level to exceed the AFDC standard. Furthermore, other changes in the case circumstances might also be occurring which alone, or in combination, could cause or contribute to ineligibility.

The proposed regulations provide that AFDC ineligibility would be due "partly" as a result of a support collection when the change in the support collection actively contributes to the loss of eligibility, but is not sufficient to cause ineligibility by itself. The child or spousal support collection

would be considered to actively contribute if: (1) the family remained eligible when all factors except the child or spousal support change were taken into consideration; (2) the family remained eligible when the support change alone (or as combined with other, unchanged income), was taken into consideration; and (3) the family was ineligible when the support collection change was considered in combination with the family's other changes in circumstances.

The following case examples illustrate the application of the definitions of "wholly" and "partly."

1. An assistance unit receives \$200 in countable child support (i.e., in child support after the disregard at 45 CFR 302.51(b)(1) is applied) and a \$100 cash contribution from a relative; the applicable standard of assistance is \$350. In the next month, the countable child support remains at \$200, but the contribution increases to \$200. Because there is no increase in child support, the Medicaid extension is not available.

2. A four-person assistance unit receives \$300 in countable child support for two of three children in the unit; the applicable standard of assistance is \$325. The third child turns nineteen and moves out of the household. In the following month, the State agency adjusts the size of the assistance unit from four to three and reduces the standard of assistance to \$275. Because the income (i.e., \$300 in countable child support) exceeds the standard of assistance (i.e., \$275), the unit is ineligible for AFDC. However, the Medicaid extension is not available because there was no increase in the support collection; ineligibility was caused by the adjustment in the standard of assistance, rather than by a change in the amount of child support.

3. An assistance unit receives \$325 in countable child support; the applicable standard of assistance is \$375. In the next month, the countable child support increases to \$350 and at the same time one of the older children leaves home and as a result the applicable standard of assistance is reduced to \$300. The countable income (i.e., \$350 in child support) exceeds the new standard (i.e., \$300) and results in ineligibility. The Medicaid extension does not apply in this situation. Since the change in support collection, when viewed in isolation, was not sufficient to cause ineligibility, the ineligibility was not caused "wholly" by the support collection. Furthermore, since the reduction in the standard of assistance to \$300 (when compared to the original amount of child support of \$325) was sufficient by itself to cause ineligibility,

the ineligibility was not caused "partly" by the support collection. Thus, the change in child support did not cause or actively contribute to the loss in eligibility, and the extension is not available.

4. An assistance unit receives \$250 in countable child support and \$100 in title II benefits; the applicable standard of assistance is \$375. In the next month, the countable child support increases to \$300 and the title II benefit remains at \$100. The combined countable income (the \$300 support and \$100 title II) exceeds the \$375 standard of assistance and results in ineligibility. Because the change in the child support collection, when viewed in isolation, was sufficient to cause ineligibility, the ineligibility is considered to be "wholly" due to the increased child support collection, and the Medicaid extension applies.

5. An assistance unit receives \$200 in child support and \$175 in title II benefits; the applicable standard of assistance is \$400. The child support increases to \$475, and the title II increases to \$425—causing ineligibility for the entire unit. Because the family's child support collection—*independent of the title II increase*—caused ineligibility, the Medicaid extension is available. In this case, the ineligibility is considered to be "wholly" due to the child support collection (even though the change in title II benefits, by itself, was also sufficient to cause ineligibility).

6. An assistance unit receives \$200 in countable child support and \$100 in title II benefits; the applicable standard of assistance is \$325. In the next month both the child support and title II increase by \$75. With the family's income now at \$450, the family becomes ineligible due to excess income. Because the increase in child support by itself was sufficient to cause ineligibility (when added to the unchanged amount of title II benefits), the family's ineligibility is considered to be due "wholly" to the increase in child support, and the Medicaid extension applies.

7. An assistance unit receives \$100 in countable child support and \$150 in title II benefits; the applicable standard of assistance is \$350. In the next month both the child support and title II increase by \$75. With the family's income now at \$400, the family becomes ineligible due to excess income. Because the increases in title II benefits and child support were both necessary to cause ineligibility, the family's ineligibility is considered to be "partly" due to the increase in child support, and the Medicaid extension applies. In this case, the child support collection actively contributes to ineligibility.

In summary, these proposed regulations and our interpretation of Congressional intent as it relates to the terms "wholly" or "partly" limit the Medicaid extension under this provision to cases where ineligibility can be attributed, at least partly, to the initiation of or an increase in the amount of a support collection. The Medicaid extension is not available if countable child or spousal support does not increase, or if the family's total income does not increase sufficiently to cause ineligibility. Also, the proposed regulations reflect our belief that the support collections must actually cause or actively contribute to ineligibility for AFDC, even if there are other factors which also contribute to ineligibility or could simultaneously cause it.

Extensions of Medicaid eligibility pursuant to expiration of the earnings disregards as set forth in 45 CFR 233.20(a)(14) or pursuant to section 303(a) of the Family Support Act of 1988 (P.L. 100-485) are not affected by this provision. Thus, if a family is entitled to extended Medicaid as a result of earned income under § 303(a) and is also simultaneously entitled to extended Medicaid as a result of a change in child or spousal support collections, the assistance unit would be entitled to the full twelve-month extension of Medicaid available under the section 303(a) transitional provision if it meets the requirements of § 1925 of the Social Security Act. However, one extended period cannot be delayed so that it occurs at the end of the other extended period.

Regulatory Procedures

Executive Order 12291

These proposed rules do not meet any of the criteria specified in Executive Order 12291 for a major regulation. Therefore, a regulatory impact analysis is not required. The following estimates of costs of implementation represent the HCFA Actuary's revisions to the original estimates which were prepared one year prior to the enactment of this legislation and amount to less than \$100 million annually:

MEDICAID COSTS

[In millions]

	FY90	FY91	FY92	FY93	FY94
Federal cost	5	5	5	5	5
State cost	5	5	5	5	5
Total	10	10	10	10	10

The above cost estimates are for Medicaid only and are the only costs estimated to result from this provision.

Paperwork Reduction Act

There will be no reporting or recordkeeping requirements imposed on the public or States which would require clearance by the Office of Management and Budget.

Regulatory Flexibility Act

The primary impact of these proposed rules is on State governments and individuals. Therefore, we certify that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act (RFA), is not required.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.780, Assistance Payments Maintenance Assistance

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: March 30, 1992.

Jo Anne B. Barnhart,
Assistant Secretary for Children and Families.

Dated: March 30, 1992.

J. Michael Hudson,
Acting Administrator, Health Care Financing Administration.

Approved: June 18, 1992.

Louis W. Sullivan,
Secretary of Health and Human Services.

Health Care Financing Administration,
42 CFR Chapter IV

For the reasons set out in the preamble, Parts 435 and 436 of Chapter IV, Title 42, Code of Federal Regulations, are proposed to be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. § 1302).

2. Section 435.115 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 435.115 Individuals deemed to be receiving AFDC.

(f) The State must deem an individual to be receiving AFDC if the collection or increased collection of child or spousal support results in the termination of AFDC eligibility in accordance with section 406(h) of the Social Security Act. States must continue to provide Medicaid for four consecutive months, beginning with the first month of AFDC ineligibility, to each dependent child and each relative with whom such child is living (including the eligible spouse of such relative as described in section 406(b) of the Social Security Act) who:

(1) Becomes ineligible for AFDC on or after August 16, 1984; and

(2) Has received AFDC for at least three of the six months immediately preceding the month in which the individual becomes ineligible for AFDC; and

(3) Becomes ineligible for AFDC wholly or partly as a result of the initiation of or increase in child or spousal support collection; and

(4) Has not moved to another State during the 4-month period. If individuals move out of the State in which they have extended coverage, they lose the extended coverage. However, if they move back to and reestablish residence in the State in which they have the

extended coverage, they are eligible for any of the months remaining in the four-month period in which they are residents of that State.

(g) For the purposes of paragraph (f) of this section:

(1) AFDC ineligibility is considered to be "wholly" the result of the initiation of or increase in child or spousal support collection when the change in the support collection, in and of itself, is sufficient to cause ineligibility, even if the support collection must be combined with other, unchanged income in order for income to exceed the AFDC standard, or even if other changes in circumstances might also, alone or in combination, simultaneously cause or contribute to ineligibility.

(2) AFDC ineligibility is considered to be "partly" the result of the initiation of or increase in child or spousal support collection if:

(i) The family remains eligible when all other factors and changes (exclusive of the support change) are considered alone or in combination;

(ii) The family remains eligible when the change in the child or spousal support collection is considered in isolation (or in combination with unchanged income); and

(iii) The family is ineligible when all changes in circumstances (including the support collection) are considered in combination; and

(3) In cases of increases in both support collections and earned income, eligibility under this section does not preclude eligibility under 45 CFR 233.20(a)(14) or section 1925 of the Social Security Act (which was added by 303(a) of the Family Support Act of 1988 (42 U.S.C. 1396s)). Extended periods resulting from both an increase in a support collection and from an increase in earned income must run concurrently.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

1. The authority citation for Part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.114 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 436.114 Individuals deemed to be receiving AFDC.

(f) The State must deem an individual to be receiving AFDC if the collection or increased collection of child or spousal support results in the termination of AFDC eligibility in accordance with

section 406(h) of the Social Security Act. States must continue to provide Medicaid for four consecutive months, beginning with the first month of AFDC ineligibility, to each dependent child and each relative with whom such child is living (including an eligible spouse of such relative as described in section 406(b) of the Social Security Act) who:

(i) Becomes ineligible for AFDC on or after August 16, 1984; and

(2) Has received AFDC for at least three of the six months immediately preceding the month in which the individual becomes ineligible for AFDC; and

(3) Becomes ineligible for AFDC wholly or partly as a result of the initiation of or increase in child or spousal support collection; and

(4) Has not moved to another State during the four-month period. If individuals move out of the State in which they have extended coverage, they lose the extended coverage. However, if they move back to and reestablish residence in the State in which they have the extended coverage, they are eligible for any of the months remaining in the four-month period in which they are residents of that State.

(g) For the purposes of paragraph (f) of this section:

(1) AFDC ineligibility is considered to be "wholly" the result of the initiation of or increase in child or spousal support collection when the change in the support collection, in and of itself, is sufficient to cause ineligibility, even if the support collection must be combined with other, unchanged income in order for income to exceed the AFDC standard, or even if other changes in circumstances might also, alone or in combination, simultaneously cause or contribute to ineligibility;

(2) AFDC ineligibility is considered to be "partly" the result of the initiation of or increase in child or spousal support collection if:

(i) The family remains eligible when all other factors and changes (exclusive of the child or spousal support change) are considered alone or in combination;

(ii) The family remains eligible when the change in the support collection is considered in isolation (or in combination with unchanged income); and

(iii) The family is ineligible when all changes in circumstances (including the support collection) are considered in combination; and

(3) In cases of increases in both support and earned income, eligibility under this section does not preclude eligibility under 45 CFR 233.20(a)(14) or section 1925 of the Social Security Act (which was added by 303(a) of the

Family Support Act of 1988 (42 U.S.C. 1396s)). Extended periods resulting from both an increase in a support collection and from an increase in earned income must run concurrently.

Administration for Children and Families

45 CFR Chapter II

For the reasons set out in the preamble, part 233 of chapter II, title 45, Code of Federal Regulations, is proposed to be amended as set forth below:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for Part 233 is revised to read as follows:

Authority: 42 U.S.C. 301, 602, 606, 606 note, 607, 1202, 1302, 1352 and 1382 note.

2. Section 233.20 is amended by adding a new paragraph (a)(15) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(15) For Medicaid eligibility only, pursuant to section 406(h) of the Act:

(i) Each dependent child and each relative with whom such a child is living (including the spouse of such relative pursuant to § 237.50(b) of this chapter) who becomes ineligible for AFDC wholly or partly because of the collection or increased collection of child or spousal support will be deemed to be receiving AFDC, but only for purposes of this paragraph (a)(15), for a period of our consecutive calendar months beginning with the first month of AFDC ineligibility. To be eligible for extended Medicaid coverage pursuant to this paragraph (a)(15), each dependent child and relative must meet the following conditions:

(A) The individual must have become ineligible for AFDC on or after August 16, 1984; and

(B) The individual must have received AFDC in at least three of the six months immediately preceding the month in which the individual becomes ineligible for AFDC; and

(C) The individual must have become ineligible for AFDC wholly or partly as a result of the initiation of or increase in child or spousal support collection; and

(D) The individual has not moved to another State during the four month period. If an individual moves out of the State in which he/she has extended coverage, such an individual will lose the extended coverage. However, if the individual moves back to and reestablishes residency in the State where he/she has extended coverage, the

individual is eligible for any of the months remaining in the four month period in which he/she is a resident of that State.

(ii) For purposes of this paragraph (a)(15):

(A) AFDC ineligibility is considered to be "wholly" the result of the initiation of or increase in child or spousal support collection when the change in the support collection is sufficient, in and of itself, to cause ineligibility, even if the support collection must be combined with other, unchanged income in order for income to exceed the AFDC standard, or even if other changes in circumstances might also, alone or in combination, simultaneously cause or contribute to ineligibility;

(B) AFDC ineligibility is considered to be "partly" the result of the initiation of or increase in child or spousal support collection if:

(1) The family remains eligible when all other factors and changes (exclusive of the child or spousal support change) are considered alone or in combination;

(2) The family remains eligible when the change in the support collection is considered in isolation (or in combination with unchanged income); and

(3) The family is ineligible when all changes in circumstances (including the support collection) are considered in combination; and

(C) In cases of increases in both support collections and earned income, eligibility under this section does not preclude eligibility under paragraph (a)(14) of this section or section 1925 of the SSA which was added by section 303(a) of the Family Support Act of 1988 (42 U.S.C. 1396s). Extended periods resulting from both an increase in a support collection and from an increase in earned income must run concurrently.

* * * * *

[FR Doc. 92-27857 Filed 11-25-92; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-259, FCC 92-499]

Cable Television Services; Must Carry and Retransmission Consent Provisions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission, through this decision, takes the first steps toward

implementing the Cable Television Consumer Protection and Competition Act of 1992 (1992 Act). This Notice of Proposed Rule Making (Notice) solicits comments on how the mandatory television broadcast carriage (must-carry) for noncommercial and commercial television stations, and retransmission consent provisions of the 1992 Act should be incorporated into its rules. Section 4 of the 1992 adds a new section 614 to the Communications Act of 1934, as amended, that provides mandatory carriage rights for local commercial television stations. Section 5 of the Act adds a new section 615 to the Communications Act of 1934, as amended, establishing carriage requirements regarding noncommercial educational stations. Section 6 of the 1992 Act amends section 325 of the Communications Act by delineating retransmission consent requirements. The Notice proposes to incorporate these provisions of the 1992 Act into the Commission's rules, and seeks clarification of some aspects of the new requirements. The action is taken in order to comply with the 1992 Act.

DATES: Comments are due by January 4, 1993, and reply comments are due by January 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauber, Mass Media Bureau, Policy and Rules Division (202) 632-5414 (must-carry) or Jonathan Levy, Office of Plans and Policy (202) 653-5940 (retransmission consent).

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 92-259, FCC 92-499, adopted November 5, 1992, released November 19, 1992. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1990 M Street NW., room 640, Washington, DC 20554.

Synopsis of the Notice of Proposed Rule Making

1. This notice, in compliance with the 1992 Act (Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102-385, 102 Stat. (1992)), seeks comment on the adoption of implementing regulations relating to mandatory television broadcast signal carriage and retransmission #consents. Specifically at issue in this proceeding are section 4 of the Cable Act of 1992, which contains the mandatory signal

carriage provision for commercial stations, section 5, which contains analogous rules for noncommercial stations, and section 6, which contains the retransmission consent provisions.

2. The 1992 Act contains two provisions that fundamentally alter the relationship that has existed in recent years between cable television systems (and other "multichannel video programming distributions") and the broadcast stations whose signals they distribute to their subscribers. The first of these provisions addresses the rights of "local" commercial and noncommercial television broadcasters to carriage on cable television systems on a mandatory basis. The second provision, in certain defined circumstances, prohibits cable operators and other multichannel video programming distributions from carrying the signals of television stations without first obtaining their consent. The two provisions are related in that, with respect to local cable carriage, broadcasters on a system-by-system basis must make a choice once every three years whether to proceed under the mandatory carriage rules or whether their relationship with system operators will be governed by the retransmission consent requirement. Although the provisions are related by virtue of that option, they are otherwise substantively quite distinct, with each provision functioning in a separate fashion once a selection is made. Thus, the inclusion of both issues in a single proceeding is simply a matter of administrative convenience and not an indication that the matters are not severable.

3. Noncommercial Station Must-Carry Provisions. The mandatory carriage provisions for noncommercial stations contain no specific effective date and, thus, under the structure of the 1992 Act, become effective on December 4, 1992 (60 days after enactment). While the 1992 Act does not specifically direct that rules be adopted to effectuate the new statutory must-carry requirements for noncommercial educational (NCE) television stations, the Commission is requesting comment on these provisions because we intend to codify these provisions into the rules and some clarifications may be warranted.

4. The 1992 Act generally requires cable operator to carry all qualified local NCE stations requesting carriage. Cable systems with 12 or fewer usable activated channels must carry one such signal and systems with between 13 and 36 channels must carry up to three qualified local NCE stations. Section 615 provides that an NCE station will qualify for must-carry rights if it is licensed by the Commission as an NCE

station and if it is owned and operated by a public agency, nonprofit foundation, corporation or association, and if that licensee is eligible to receive a community service grant from the Corporation for Public Broadcasting. In the alternative, an NCE station will be considered qualified if it is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes. For this purpose, a qualified NCE station is considered local if the reference point of its community of license, as defined in § 76.53 of the Commission's rules, is within 50 miles of the principal headend of the cable system, or if its Grade B service contour, as defined in § 73.683(a) of the Commission's rules, encompasses the principal headend of the cable system.

5. The Commission invites comment on various aspects of the definition of "qualified local NCE station" and on several related proposals. For example, the Commission proposes to consider a municipal NCE station eligible to invoke the must-carry rules if it transmits noncommercial educational programming for at least 50 percent of its broadcast week. The Commission further proposes to define "educational purposes" pursuant to § 73.621 of the Commission's rules. The Commission proposes, for purposes of the proposed must-carry rules, to require a cable operator with multiple headend facilities to initially choose its principal headend, as long as the choice is not intended to circumvent must-carry obligations. Moreover, the Commission proposes that if a small or medium-sized system receives multiple requests for carriage that it be permitted to select the station(s) to be carried, subject to the requirements of section 615(b) regarding carriage of existing stations.

6. Systems with a capacity of more than 36 usable activated channels are not generally required to carry additional NCE stations that substantially duplicate the programming broadcast by a qualified local NCE station that is being carried. The 1992 Act directs the Commission to define "substantial duplication" in a manner that promotes access to distinctive NCE television services. The Commission initially proposes that a station substantially duplicates the programming of another station if more than 50 percent of its weekly prime time programming consists of programming aired on the other station. Other options include adopting a definition based on all day programming schedules or other percentages of a station's programming week. The Commission seeks comment

on these options and other possible alternatives for determining where programming is substantially duplicative.

7. In addition, the 1992 Act requires that all cable operators continue to provide carriage to all qualified local NCE television stations whose signals were carried on their systems as of March 29, 1990. Section 615(h) provides that qualified NCE signals shall be available to every subscriber as part of the cable system's lowest priced service tier that includes the retransmission of local commercial television broadcast signals. Under section 615(d), a cable operator required to add the signals of qualified local NCE stations to its system may do so by placing such additional stations on PEG channels not in use for their designated purposes, subject to approval by the franchising authority. Furthermore, section 615(k) requires a cable operator, upon request by any person, to identify the NCE signals carried on its system in fulfillment of must-carry requirements. The Commission seeks comment on implementation of these requirements.

8. Finally, the Commission observes that, while the carriage obligations imposed by the 1992 Act generally do not conflict with existing rule requirements, section 615(f) prohibits the use of the network nonduplication rights, contained in 47 CFR 76.92, by qualified NCE television stations against other qualified NCE stations carried by a cable system. Consequently, as of December 4, 1992, such nonduplication rights of noncommercial educational television stations will be subject to the limits set forth in the statute and the specific rules in question will be revised accordingly in the course of this proceeding. In addition, section 4 provides that no cable operator shall be required to provide input selector switches to subscribers. Accordingly, as of December 4, 1992, the Commission will regard § 76.66 of the rules to be of no further force or effect and the rule will be deleted as part of this proceeding.

9. Commercial Station Must-Carry Provisions. The 1992 Act directs the Commission to issue rules implementing the commercial station carriage provisions within 180 days of enactment. Section 614 of the 1992 Act states that each cable operator shall carry local commercial television stations and qualified low power stations. The operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations. However, such cable systems that serve

300 or fewer subscribers are not subject to any must-carry requirements as long as they do not delete from carriage any signal of a broadcast television station. The Commission expressly requests comment on the appropriate interpretation of this exemption. A cable system with more than 12 usable activated channels is required to carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system. Beyond these must-carry requirements, the carriage of additional broadcast television signals is at the discretion of the cable operator, subject to retransmission consent and certain statutory exceptions relating to low power stations and network affiliates. The Commission requests comment on the implementation and enforcement of these requirements.

10. Section 614(b)(7) of the 1992 Act requires that every subscriber of a cable system receive all signals that are carried to fulfill must-carry obligations. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box. In such cases, the cable operator shall offer to sell or lease a converter box to such subscribers at rates in accordance with the standards established by the Commission for equipment needed to receive basic cable service pursuant to section 623(b)(3). The Commission seeks comment on the implementation of this provision, especially with respect to the notification requirements concerning those broadcast stations that cannot be viewed without a converter. In addition, the Commission requests comment on implementation of the requirement that, upon request by any person, cable operators must identify those signals it carries.

11. The Commission solicits comment on the definitions of qualified commercial television stations. As set forth in section 614(h)(1)(A), a "local commercial television station" includes any full power commercial television broadcast station licensed by the Commission that is located in the same television market as the cable system with certain exceptions such as low power television stations, television translator stations, or passive repeaters. Low power stations may qualify for must-carry rights in areas where full service stations are generally absent and the Commission determines that the station addresses local news and

informational needs that are not adequately addressed by full power stations. The 1992 Act generally defines an LPTV station as "qualified" if that station conforms to the Commission's LPTV Rules, broadcasts for at least the minimum number of hours required of television stations by the Commission and adheres to certain Commission requirements regarding nonentertainment programming and employment. The Notice requests comment on whether a case-by-case review of individual LPTV stations is needed to determine whether they are qualified or whether general rules can be relied on. The Commission also seeks comment on the basis for determining the location of the cable system for application of the must-carry provisions.

12. For must-carry purposes, section 614(h)(1)(C) of the 1992 Act defines a station's television market as Arbitron's Area of Dominant Influence (ADI). The ADI, as defined by Arbitron, is a geographic survey area based on measurable patterns of television viewing. In this regard, the Commission seeks information on how to accommodate sporadic changes in ADI assignments and how to compensate for the fact that Arbitron only creates ADIs for counties located in the continental United States.

13. Comment is also sought on the provision in section 614(h)(1)(C) which authorizes the Commission to add communities to or subtract communities from a station's television market following a written request, and to designate particular communities part of more than one television market. The Commission seeks comment on the appropriate procedures for the written request for communities to be added to or subtracted from the designated market. The Commission believes that it would be preferable to require parties requesting such determinations to file under the provisions of § 76.7, procedures for petitions for special relief, rather than the rulemaking procedures set forth in part 1, subpart C, to expedite consideration of such requests.

14. The 1992 Act specifies that, when considering such requests, the Commission shall afford particular attention to the value of localism by taking into account such factors as (1) whether the station, or similarly situated stations, have been historically carried on the cable system; (2) whether the station provides coverage or other local service to the community; (3) whether any other station qualified for carriage provides coverage of news and programming of local interest; and (4)

the local viewing patterns in both cable and non-cable homes. The Commission asks parties to consider whether more specific or additional criteria are needed to implement this provision.

15. Section 614(f) of the 1992 Act requires that the Commission make revisions needed to update § 76.51 of the existing rules, which is a list of the largest 100 television markets and their designated communities derived largely from Arbitron's 1970 prime time household rankings. Any changes made to this list would primarily affect copyright liability under the compulsory license, although they will also affect the Commission's territorial exclusivity, syndicated exclusivity and network nonduplication rules. The Commission understands that if this list is modified, the Copyright Office would use the revised list for determining copyright liability. Thus, the Commission invites comment on the extent that it should consider the possible copyright implications of any change made. Further, the Commission noted its concern regarding the situation where a station is entitled to must-carry status on the basis of its ADI at the same time that another station can request deletion of some portion of its programming because the applicable exclusivity and nonduplication rules use the § 76.51 market list. Accordingly, the Commission seeks comment on conforming its rules to avoid such anomalous situations.

16. The 1992 Act gives the cable operator discretion in selecting the signals to be carried to fulfill its must-carry obligations in cases where the number of qualified stations exceeds the number of such signals that must be carried, except that a low power station may not be carried in lieu of a full power station and, if the operator elects to carry an affiliate of a broadcast network affiliate, the affiliate located closest to the system must be selected. In addition, the cable operator is not required to carry any local television station that substantially duplicates the signal of another that is carried, whether the stations are network affiliates or independents. The 1992 Act requires the Commission to define the term "network." The Commission believes that it may be appropriate to fashion a definition of network that incorporates the substantial duplication concept to meet the objectives of these provisions. Comment is sought on this approach and the relevant comparisons of programming schedules for determining duplication.

17. Section 614(g) of the 1992 Act provides that, pending the outcome of a

future Commission proceeding on whether broadcast television stations that are predominantly used for sales presentations of program length commercials serve the public interest and necessity, a cable operator will neither be required to carry nor prohibited from carrying the signal of a commercial television station or video programming service that is predominantly used for these purposes. Until a final definition of "predominantly utilized for the transmission of sales presentations or program length commercials" is adopted, the Commission proposes to establish an interim definition. Specifically, comment is sought on whether to consider channels to be "predominantly utilized" for such purposes if more than 50 percent of their programming week consists of sales presentations or program length commercials.

18. Provisions Applicable to All Must-Carry Stations. Comment is invited on implementation of section 614(b)(3)(A) of the 1992 Act, which requires a cable operator to carry, in its entirety, the primary video, accompanying audio, and line 21 closed caption transmission of local commercial television stations and, to the extent technically feasible, to carry program-related material contained in the vertical blanking interval or on subcarriers. Section 615(g)(1) includes the same requirements for carriage of NCE stations, but specifically mentions that cable operators shall carry program-related material contained in the vertical blanking interval or on subcarriers "that may be necessary for receipt of programming by handicapped persons or for educational or language purposes." Both sections provide that retransmission of other material in the vertical blanking interval or on subcarriers shall be within the discretion of the cable operator.

19. The 1992 Act provides that a broadcaster has several options regarding the cable channel its signal is carried on. It may request carriage on its over-the-air channel, the channel position it had on July 19, 1985, or in the case of a commercial station, the channel position on which it was carried on January 1, 1992. The Commission recognizes that, under these provisions, more than one station may seek and have a valid claim to the same cable channel. Thus, the Commission seeks comment on whether a formal priority system should be established.

20. Section 614(b)(4)(A) of the Act directs the Commission to adopt carriage standards to ensure that, to the

extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal. In addition, section 615(g)(2) requires cable operators to provide qualified local NCE television stations with bandwidth and technical capacity equivalent to that provided to commercial television stations carried on the cable system, and to carry the signal of such stations without material degradation. The Commission seeks comment on implementation of these requirements. In particular, commenters are asked whether the recently adopted technical standards satisfy these requirements of the 1992 Act. See Report and Order in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 2021 (1992) and Memorandum Opinion and Order in MM Docket Nos. 91-169 and 85-38, FCC 92-508, adopted November 10, 1992.

21. The Commission proposes that cable operators be required to give the station (and subscribers in the case of NCE stations) at least 30 days' written notice before deleting a must-carry signal or moving such station to another channel as required by the 1992 Act. The Commission seeks comment on implementation of these provisions and, additionally, can or should cable operators be required to notify subscribers regarding deletion or repositioning of commercial must-carry signals. Furthermore, comment is requested on implementation of sections 614(b)(10) and 615(i) which prohibit, with some exceptions, a cable operator from accepting or requesting compensation for carriage or for channel positioning of any station carried in fulfillment of the mandatory carriage provisions.

22. A broadcaster that believes that a cable operator has failed to meet its must-carry obligations may file a complaint with the Commission following procedures specified in sections 614(d)(1) and 615(j) for commercial and noncommercial stations, respectively. The 1992 Act requires the Commission to afford cable operators an opportunity to respond to a broadcaster's complaint and to act on such complaints within 120 days. The Commission is requesting comment on whether a time limit can or should be imposed on the filing of such complaints, the procedures for the filing of complaints and whether the provisions of § 76.7 (the special relief rules), perhaps with a shorter time period, for responsive pleadings should be applied to expedite the complaint procedures.

23. Retransmission Consent. With respect to retransmission consent, the 1992 Act requires the Commission to complete its rulemaking proceeding on this matter in 180 days after enactment. The 1992 Act amends section 325 of the Communications Act of 1934 by adding provisions governing retransmission of broadcast signals by cable systems and other multichannel video programming distributors. A multichannel video program distributor (or "multichannel distributor") is "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming." The scope of this definition is important because it defines entities subject to retransmission consent as well as other provisions of the 1992 Act. Thus, as a preliminary matter, the Commission seeks comment on the scope of this definition.

24. Section 325 as amended by the 1992 Act directs the Commission to "establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection," (emphasis added) although the statute provides a general prohibition against retransmission without broadcaster consent. Therefore, the Commission seeks comment on what, if any, action can or should be taken with respect to retransmission of radio signals by multichannel distributors.

25. The Commission seeks comment on five issues relevant to retransmission consent. First, the Commission considers the scope of retransmission consent. The 1992 Act provides that, "[F]ollowing the date that is one year after the date of enactment," no cable system or other multichannel distributor "shall retransmit the signal of a broadcasting station, or any part thereof, except—(A) with the express authority of the originating station; or (B) pursuant to Section 614, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section." There are four exceptions to this requirement: (1) Noncommercial broadcasting stations; (2) retransmission directly to a home satellite antenna of the signal of a broadcast station that is not owned or operated by, or affiliated with, a broadcasting network, provided that the signal was retransmitted by a satellite carrier on May 1, 1991; (3)

retransmission directly to a home satellite antenna of the signal of a network owned or affiliated broadcasting station, provided the household receiving the signal is an unserved household; and (4) retransmission by a cable operator or other multichannel distributor of a superstation signal, provided that the signal was obtained from a satellite carrier and the originating station was a superstation as of May 1, 1991. Within one year of the enactment of the 1992 Act, and every three years thereafter, television stations are required to elect either retransmission consent rights or must-carry rights. Each station will make a signal election for each cable system in its market, except that the same election must be made for all directly competing systems. The Commission seeks comment on what degree of overlap between cable system service areas should trigger the "same election" requirement.

26. Second, because commercial television stations are required to choose between retransmission consent and must-carry rights, the implementation of the new section 325(b) and the new section 614 must be addressed jointly. Within 180 days of enactment of the 1992 Act, the Commission is required to complete its retransmission consent rulemaking proceeding and issue rules implementing the must-carry requirements for commercial stations. The Commission interprets its Congressional instructions to put the signal carriage rules into effect promptly and does not anticipate delaying the effective date of those rules until retransmission consent becomes operational on October 6, 1993. However, since some cable systems may not be in immediate compliance with the new signal carriage requirements and their decisions on how to comply may depend in part on the rules adopted, the Commission believes it appropriate to allow a limited amount of time for cable systems to come into compliance with the new must-carry rules.

27. Broadcast stations, pursuant to regulations to be adopted by the Commission, must make their election between must-carry and retransmission consent "within one year after the date of enactment" of the 1992 Act. The Commission seeks comment on an appropriate date by which this selection must be made and on the degree of flexibility we have under the 1992 Act to require stations to make their initial election earlier than the stated one year final deadline since an earlier deadline might facilitate a smooth transition to retransmission consent and would

accommodate the need to provide subscribers with some advance warning of carriage or rate changes. The Commission also requests comment on whether broadcasters' subsequent triennial elections (in 1996, 1999, 2002, etc.) should be subject to a deadline earlier than the final October 6 date specified in the statute. The Commission also seeks comment on a proposal to require each station to place a notarized copy of its election statement in its public file and to send a copy to every cable system within the station's market.

28. The Commission recognizes that there will be new commercial television stations going on the air in the years ahead. Thus, the Commission proposes that new stations be required to make their initial retransmission consent/signal carriage election within 30 days of the time that they commence regular broadcasts. They will make subsequent elections according to the schedule described in the previous paragraph. If a new station elects must-carry status, some cable operators may be required by section 614 to carry it. In order to do so, these operators may need to drop or move another service. To allow time for such adjustments, the Commission proposes that a new station's election take effect 60 days after it is made. Comment is requested on these proposals and on how the Commission should determine when a new station commences regular broadcasts.

29. Third, the Commission examines and solicits comment on the relationship between retransmission consent and the must-carry provisions of section 614. The 1992 Act provides that if a station elects to exercise retransmission consent rights with respect to a cable system, "the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system." After a review of the Senate Report, the Commission tentatively concludes that cable operators may count signals carried pursuant to retransmission consent towards their must-carry obligations and invites comment on this interpretation of Congressional intent.

30. Section 614 of the 1992 Act includes several provisions governing the manner in which cable operators shall carry local television stations, including the content to be carried, channel positioning, provision of signals to all subscribers of a cable system and notification by cable operators of stations prior to deleting or repositioning them. Moreover, cable operators are prohibited from accepting or requesting compensation from stations electing

must-carry privileges. A literal reading of section 325(b)(4), and the fact that section 614 is captioned "Carriage of Local Commercial Television Signals," suggests that these provisions apply only to local stations carried pursuant to an election of must-carry status. However, the wording of these provisions is not uniform. In order to resolve any possible ambiguity regarding the scope of these provisions, we seek comment on our tentative interpretation that they apply only to must-carry stations.

31. Fourth, the Commission considers a number of issues relating to the retransmission consent contracts between stations and cable operators. When a cable system must have "the express authority of the originating station" to retransmit its television signal, the Commission proposes to require that such authority be conveyed in writing. The Commission notes that it does not intend to regulate retransmission agreements in any detail and that there is nothing to prevent parties from negotiating retransmission consent contracts that contain provisions identical to those in section 614 regarding the manner of carriage. Moreover, in contrast to the case of must-carry stations, cable operators may accept or request monetary payment or other valuable consideration in exchange for favorable channel positioning or for signal carriage. Parties are also asked to consider whether the general cable technical standards should apply to carriage of retransmission consent signals. In addition, the Commission seeks comment on its tentative conclusion that disputes regarding retransmission consent contracts should be resolved in a court of competent jurisdiction.

32. Section 325(b)(6) provides that "[N]othing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcast stations and video programmers." The Commission observes that the Senate Report distinguishes between "the authority granted broadcasters under the new section 325(b)(1) of the 1934 Act to consent or withhold consent for the retransmission of the broadcast signal, and the interests of the copyright holders in the programming contained in that signal." Accordingly, when a station elects retransmission consent, a cable system (or other multichannel video programming distributor) must obtain the permission of the station to

carry its signal—even if the system has already secured permission to retransmit the individual programs carried on that signal through either the cable compulsory license or the express agreement of the copyright holders.

33. In turn, the Commission must determine whether the broadcast station need obtain any permission from the copyright holders of its programming before granting retransmission consent to a cable system (or other multichannel video programming distributor). The Commission notes, first, the above-quoted statutory instruction not to construe this section as affecting existing or future program licensing agreements. This language suggests that any rights created by section 325(b)(1)(A) can be superseded by the express terms of existing or future agreements between program suppliers and broadcast stations concerning retransmission rights. The Commission seeks comment on this interpretation and whether it would be correct to interpret section 325(b)(1)(A) as enabling broadcasters, in the absence of any express contractual arrangement, to grant or withhold retransmission consent without authorization from the copyright holders.

34. Finally, section 325(b)(3)(A) requires the Commission to consider in this proceeding the impact of retransmission consent on rates for the basic service tier and to ensure that the retransmission consent regulations do not conflict with the Commission's section 623(b)(1) obligation "to ensure that the rates for the basic service tier are reasonable" and "a reasonable profit, as defined by the Commission's obligation to subscribers" to keep basic service rates reasonable. Pursuant to section 623(b)(2)(C) among the factors to be considered in prescribing regulations for basic service rates are "the direct costs (if any) of obtaining, transmitting, and otherwise providing signals carried on the basic service tier * * * and changes in such costs." The foregoing suggests that there is no specific regulatory action that the Commission need take pursuant to section 325(b) concerning the impact of retransmission consent compensation on basic rates in this proceeding. However, in a separate proceeding concerning rate regulation, the Commission will be seeking comment on proposed rules for meeting this obligation. The Commission invites comment on this approach.

Administrative Matters

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds:

I. Reason for action. This action is taken to implement certain provisions of the Cable Television Consumer Protection and Competition Act of 1992.

II. Objectives. The Cable Act of 1992 and the subsequent Commission actions to implement it are intended to set forth a regulatory scheme for cable systems in the area of broadcast signal carriage and channel usage. Congress adopted the statute to address its concerns regarding the performance of the cable industry in these areas since the 1984 Cable Act was enacted. The must-carry provisions of this act are intended to give local commercial and noncommercial television stations carriage rights on a mandatory basis on cable systems. The retransmission consent provision prohibits cable operators, in certain defined circumstances, from carrying the signals of television stations without first obtaining their consent and permits them to be compensated for such carriage.

III. Legal basis. Action as proposed for this rule making is contained in section 4(i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992.

IV. Reporting, recordkeeping and other compliance requirements. None.

V. Federal rules which overlap, duplicate or conflict with this rule. None.

VI. Description, potential impact and number of small entities affected. In order to implement the Cable Television Consumer Protection and Competition Act of 1992, the Commission has proposed to add new rules and modify others. Depending on the extent of such actions, different cable systems may be affected in different ways. For example, there are incremental thresholds for signal carriage obligations on cable systems based on channel capacity. With respect to small systems, we note that the statute exempts systems with 300 or fewer subscribers and fewer than 13 channels, although such systems may not delete from carriage any broadcast television station they carry. We observe that there are about 3,200 cable systems with 300 or fewer subscribers, representing 29% of all systems and less than one percent of all cable subscribers. No information is available to indicate what proportion of these systems have 12 or fewer channels. The retransmission consent provision will provide broadcasters, large and small, with the opportunity to be compensated for the carriage of their signals should

they choose this option in lieu of must-carry status.

VII. *Any significant alternatives minimizing impact on small entities and consistent with stated objective.* None.

35. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this Notice of Proposed Rule Making, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981). *Ex Parte*

36. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.203, and 1.206(a).

Comment Dates

37. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 4, 1993, and reply comments on or before January 19, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, 1919 M Street NW., Washington, DC 20554.

Ordering Clauses

38. Authority for this proposed Rule Making is contained in sections 4 (i) and (j), and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and

Competition Act of 1992, Public Law No. 102-385.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 92-28712 Filed 11-25-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS-127; Notice 1]

RIN 2137-AC27

Regulatory Review: Hazardous Liquid and Carbon Dioxide Pipeline Safety Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change miscellaneous hazardous liquid and carbon dioxide pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The proposed changes result from the regulatory review RSPA carried out in response to the President's directive on reducing the burden of government regulation. The proposed changes would reduce costs in the liquid pipeline industry without compromising safety.

DATES: RSPA invites interested persons to submit comments by December 28, 1992. Comments filed after this deadline will be considered only to the extent that is practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: J. Willock, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5046, regarding copies of this notice or other material that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

In a January 28, 1992, memorandum, President Bush wrote to Department and agency heads about the need to reduce the burden imposed by government regulation. The President was concerned that agencies were not doing enough to review and revise existing regulations to eliminate unnecessary and overly burdensome requirements. The President recognized that regulations that do not keep pace with new technologies and innovations impose needless costs and impede economic growth.

The President's memorandum called for a 90-day moratorium on issuing certain proposed or final regulations. The President asked agencies to use that period to review their existing regulations to identify those that are not cost-effective and to determine which could be more goal-oriented, could include market mechanisms, and could be clarified to avoid needless litigation. Each agency was asked to propose, as soon as possible, administrative changes to correct those regulations identified by the review.

In response to the President's memorandum, DOT published a notice requesting public comment on the Department's regulatory programs (57 FR 4745; Feb. 7, 1992). Commenters were asked to identify regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, impose needless costs or red tape, or overlap or conflict with other DOT or Federal regulations. The deadline for submitting comments was March 2, 1992.

RSPA received comments from six organizations about the pipeline safety regulations in part 195. Comments were from three regulated pipeline companies, a pipeline trade association, a state pipeline safety agency, and a federal agency. RSPA has carefully considered all comments in its review of the regulations, and these comments are available in the docket. Some comments will be considered in future rulemakings. Additionally, RSPA is preparing a separate rulemaking "Update of Standards Incorporated by Reference" which updates the editions of the industry standards that are incorporated in part 195.

By memorandum of April 29, 1992, the President continued the moratorium on certain proposed and final regulations for 4 additional months. With regard to the review of existing regulations, the President requested that, as soon as

possible, agencies publish those proposed changes which require public comment.

Proposed Changes to Part 195 Safety Standards

The following discussion explains the changes RSPA proposes to various standards in part 195:

Section 195.1 Applicability

Section 195.1(b)(5) currently states that part 195 does not apply to the offshore transportation of hazardous liquid or carbon dioxide upstream from the outlet flange of each facility on the Outer Continental Shelf (OCS) where hydrocarbons or carbon dioxide are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. RSPA proposes to delete the phrase "on the Outer Continental Shelf", and to apply the same exception to similar pipelines in state offshore waters.

The current regulations are not clear where the applicability of Part 195 begins on offshore gathering lines in state waters. Shell Offshore, Inc. proposed a similar change in comments to an NPRM proposing to better define gathering lines (56 FR 48505; September 25, 1991; Docket PS-122).

This revision will clarify that part 195 does not apply to field production lines; i.e., flow lines in state offshore waters, similar to the present exception on the OCS. Part 195 regulations are currently being applied to some production lines in state offshore waters where such regulations were not intended to apply. The drug testing requirements in part 199 are also being applied to workers on some production platforms in state offshore waters where such regulations were not intended to apply. The proposed revision would make federal and state offshore rules consistent and should reduce operating expenses for the operator. Comments are solicited on whether there is a gap in the regulation of offshore production line in state waters.

Section 195.1(b)(6) provides that part 195 does not apply to pipeline transportation through onshore production, refining, or manufacturing facilities, or storage or in-plant piping systems associated with such facilities. This exception is based on section 201(3) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001(3)). However, RSPA's review disclosed that § 195.1(b)(6) does not clearly distinguish where the application of Part 195 over pipeline transportation begins or ends at a production, refining, or manufacturing plant. For example, the

demarcation between an in-plant piping system and a pipeline serving the plant is unclear. Also unclear from the language is the applicability to transfer line that connect parts of the same plant at separate locations.

To clarify these issues, we are proposing to define the term "in-plant piping system" as piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline, not including any device and associated piping that are necessary to control pressure in the pipeline. This proposed definition is intended to exclude from the meaning of "in-plant piping system" segments of transfer lines that are not located on plant grounds. Not only does their location make such segments inconsistent with an ordinary understanding of "in-plant," but because access to these segments is not under plant control, they pose a greater risk to the public. Certain pressure control devices and associated piping are excluded from the proposed definition because part 195 requires pipeline operators to provide adequate controls and equipment to maintain pipeline pressure within set limits (§ 195.406(b)). These devices now mark the limit of part 195 jurisdiction inside plants. Under the proposal, the inlet of the pressure control device would demarcate in-plant piping if the pipeline is moving product away from plant grounds; the outlet of the pressure control device if the pipeline is supplying the plant. If there is no such pressure control device on plant grounds, in-plant would extend to the boundary of plant grounds.

Section 195.1(b)(7) excepts from part 195 the transportation of hazardous liquid or carbon dioxide by vessel, aircraft, tank truck, tank car, or other vehicle, or terminal facilities used exclusively to transfer hazardous liquid or carbon dioxide between such modes of transportation. The language of this terminal facilities exception leaves unclear the applicability of Part 195 to transfer lines that exit terminal grounds to effect transfers. Also, because the pipeline mode of transportation is not mentioned, § 195.1(b)(7) has led some to conclude that terminal facilities used to transfer hazardous liquid between a pipeline and another mode of transportation are covered by part 195. However, this inference is incorrect, since part 195 does not apply to facilities at pipeline terminals other than breakout tanks, as defined in § 195.2, and associated piping.

As with in-plant piping discussed above, a proposed amendment to § 195.1(b)(7) would clarify that the

terminal facilities exception applies only to those terminal facilities located on the grounds of the terminal. Terminal owned or operated transfer lines that are located outside terminal grounds are currently subject to part 195.

Section 195.1(b)(7) would be further amended to clarify that the terminal facilities exception applies to facilities used exclusively to transfer hazardous liquid or carbon dioxide between a non-pipeline mode of transportation and a pipeline, except for any device and associated piping that are necessary to control pressure in the pipeline. The terminal facilities exception does not include breakout tanks and associated piping, for these facilities are not used exclusively for transfers between non-pipeline and pipeline modes.

Section 195.1(b)(8) provides that part 195 does not apply to "[t]ransportation of carbon dioxide downstream from a point in the vicinity of the well site at which carbon dioxide is delivered to a production facility." The Texas Railroad Commission believes this section should be modified so that part 195 does not apply to carbon dioxide lines used for oil recovery injection systems. Although the purpose of § 195.1(b)(8) is to exclude from Part 195 pipelines used in the injection of carbon dioxide for oil recovery operations, we agree that the language of § 195.1(b)(8) does not do so. Therefore, we are proposing an amendment to § 195.1(b)(8) as set forth below.

Section 195.2 Definitions (Petroleum, Petroleum product)

Part 195 applies to the transportation of hazardous liquids by pipeline. As defined in § 195.2, the term "hazardous liquid" means "petroleum, petroleum product, and anhydrous ammonia." However, because the terms "petroleum" and "petroleum product" are generic and are not defined in part 195, RSPA's review disclosed that the applicability of part 195 to particular commodities may be unclear.

This notice proposes to define these two terms. For "petroleum", we propose to adopt the definition published in the 1989 edition of the American Society of Mechanical Engineers (ASME) B31.4 Code. For "petroleum product", we propose to adopt a definition based on the American Petroleum Institute (API) definition, published in Technical Report No. 1, fourth edition, printed in 1988. Because the API definition is broad enough to include any product derived from hydrocarbon compounds, we are proposing that "petroleum product" cover only those products that are flammable, toxic, or corrosive. This

modification would indicate the hazardous nature of the commodity transported, consistent with the definition of "gas" in 49 CFR part 192.

The definition of "Secretary" would be amended to eliminate the connotation of gender.

The proposed new definitions and definition change would not compromise pipeline safety, because they would not alter the intended application of the existing part 195 regulations.

Sections 195.2, 195.106, 195.112, 195.212 and 195.413 (Nominal Outside Diameter of the Pipe in Inches)

Section 195.106(a) sets out the formula for calculating the internal design pressure for steel pipe. One of the variables in the formula is "D", defined as the "nominal outside diameter of the pipe in inches." However, throughout part 195 the dimensioning of pipe size is inconsistently designated. Line pipe sizes less than 14 inches nominal outside diameter are furnished by pipe mills in nominal outside diameters that are not even inches, e.g. 2 $\frac{3}{8}$ inches, 8 $\frac{3}{8}$ inches, and 10 $\frac{3}{4}$ inches. Nonetheless, the pipe sizes in the table of § 195.106(b) are shown as "6 inches in outside diameter", but should be "6 $\frac{5}{8}$ inches nominal outside diameter." Also, the "12 $\frac{3}{4}$ inches outside diameter" would be more correctly shown as "12 $\frac{3}{4}$ inches nominal outside diameter." Similar incorrect dimensioning of pipe sizes are shown in § 195.2 (under Gathering Line), 195.106(c), 195.112(c), 195.212(b)(3)(ii) and 195.413(a). RSPA proposes to rectify these instances of incorrect dimensioning. The proposed corrections would be consistent with the line pipe sizes and dimensions used by pipe mills and the pipeline industry. The proposed corrections would not compromise safety, but, for inexperienced persons, these corrections will improve the clarity and meaning of the regulations.

Section 195.3 Matter Incorporation by Reference

Section 195.3 sets out the general requirements for the incorporation in the regulations of industry standards for the design, construction and operation of hazardous liquid and carbon dioxide pipelines. Paragraph 195.3(a) states that incorporation of a document by reference has the same force as if the document were copied in the regulations. Some operators have misinterpreted this section to mean that they must comply with all of the terms contained in a referenced document. RSPA proposes to revise § 195.3(a) to clarify that an entire document is not incorporated when the document is

incorporated by reference; rather, only those portions specifically referenced in the regulations are incorporated.

Section 195.5 Conversion to Service Subject to This Part

This section establishes various criteria for qualifying a pipeline previously used in service not subject to this part for use under this part. Section 195.5(a)(1) requires that the design of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in a satisfactory condition for safe operation. Section 195.5(a)(4) currently requires that the pipe must be hydrostatically tested in accordance with subpart E of this part to substantiate the maximum allowable operating pressure (MAOP) permitted by § 195.406. The term "maximum allowable operating pressure" is proposed to be revised to "maximum operating pressure" to conform to the use of this term in other regulations in part 195.

Several of the comments received by RSPA concerning Part 192 gas pipeline safety regulations suggested using a hydrostatic test to establish the yield strength of pipelines for which yield strength is now known. Neither part 195 nor the ASME B31.4 Code provide for hydrostatic testing as a method to determine the yield strength of pipe (ASME B31.4 Code for Pressure Piping, Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols). However, the ASME B31.8 Code for gas pipelines provides for establishing MAOP on the basis of hydrostatic testing of existing natural gas pipelines or those pipelines being converted to natural gas service where one or more of the factors in the design formula is unknown (ASME B31.8 Code for Pressure Piping, Gas Transmission and Distribution Piping Systems, paragraph 845.214, Qualification of a Steel Pipeline or Main to Establish the MAOP). The test pressure used in the MAOP calculation is limited to the test pressure obtained at the high elevation point of the minimum strength test segment and to the pressure required to produce a stress equal to the yield strength as determined by hydrostatic testing. The procedure for determining yield strength by hydrostatic testing is included in B31.8 appendix N, Recommended Practice for Hydrostatic Testing Pipelines in Place.

In light of the above discussion, RSPA proposes to add § 195.3(c)(2)(iii) incorporating by reference the ASME B31.8, "Code for Pressure Piping, Gas

Transmission and Distribution Piping Systems" (1989 Edition with Addenda A, B, C). In addition, RSPA proposes to revise § 195.5(a)(1) to permit an operator wishing to qualify pipe for use under Part 195, where the pipe was previously used in service other than transporting hazardous liquids or carbon dioxide, to verify the review of the pipe design pressure and substantiation of the maximum operating pressure (MOP), when one or more of the variables necessary to determine those pressures are unknown, by (1) testing the pipeline in accordance with ASME B31.8, appendix N, to produce a pressure equal to yield strength, and (2) applying to not more than 80 percent of the first pressure that produces yielding the design factor F in § 195.106(a) and the appropriate factor in § 195.106(e).

The proposed change will enable the conversion of certain pipelines used in other service or reduce the cost of conversion and will enable the operation of these lines at their fullest potential.

The proposed change should not have an adverse effect on pipeline safety. To determine the MOP at a stress equivalent to the yield strength of the pipe in the affected pipelines, testing the lines to hydrostatic pressures greater than otherwise required for the determination of the MOP under § 195.406(a)(3) will be necessary. The result will be a greater margin between hydrostatic test pressure and MOP. Any defects present in the pipeline will likely fail during hydrostatic testing prompting the pipeline operator to correct the defect.

Section 195.8 Transportation of Hazardous Liquid or Carbon Dioxide in Pipelines Constructed With Other Than Steel Pipe

The last sentence in § 195.8 would be revised to replace the word "he" with "the Secretary" to remove any implication of gender.

Section 195.50 Reporting Accidents and Section 195.52 Telephonic Notice of Certain Accidents

Sections 195.50(f) and 195.52(a)(3) require operators to prepare reports and give telephonic notice of accidents, respectively, when the estimated property damage due to an accident exceeds \$5,000. The API stated that the reporting criteria of \$5,000 is outdated, unnecessarily burdensome and results in unnecessary costs and red tape. Because the \$5,000 reporting requirement sometimes requires the reporting of minor accidents, RSPA proposes to amend §§ 195.50(f) and

195.52(a)(3) by increasing the reporting threshold to \$50,000, the same level as required in 49 CFR part 192.

In addition, RSPA has discovered from both its regulatory review and previous enforcement cases that there is a significant amount of confusion among pipeline operators as to which cost estimates must be included in calculating the "estimated property damage to the property of the operator or others * * *." Frequently, when reporting accidents pipeline operators fail to include as "property damage" the fair market value of the product released or those costs associated with clean-up and recovery efforts.

RSPA views these costs as "property damage to the property of the operator" and proposes to clarify the issue by amending § 195.50(f) to read: "(f) Estimated total property damage to the property of the operator * * *" and § 195.52(a)(3) to read: "(3) Caused estimated total property damage to the property of the operator * * *."

This proposed change will reduce the number of supplemental reports operators must file in order to revise their initial reports which failed to include the fair market value of the product released and those costs associated with clean-up and recovery efforts.

Moreover, these proposed rule changes should reduce the overall number of reports submitted to RSPA by 15 percent and thereby cause a corresponding reduction in pipeline reporting costs. Incidents resulting in death, injury or a spill over 50 barrels must still be reported, thus, this change would not reduce the level of pipeline safety.

Section 195.106 Internal Design Pressure

This section establishes the formula to be used in determining the design pressure for the pipe in a pipeline and criteria for determining the yield strength to be used in the design formula. When the yield strength of the pipe is not known, this section provides means for determining the yield strength by performing tensile tests of random samples of the pipe.

In the gas pipeline safety regulations, § 192.107(b)(2) permits presuming a yield strength of 24,000 p.s.i. if pipe of unknown tensile strength is not tensile tested. A change is proposed for consistency between Parts 192 and 195.

RSPA proposes to revise and renumber paragraphs within § 195.106(b) and add a new subparagraph to permit presuming a yield strength of 24,000 p.s.i. if pipe of unknown tensile strength is not tensile tested.

The proposed change will enable operators of pipelines to use pipe of unknown properties without performing tensile tests of random samples of the pipe by presuming that the yield strength of the pipe is 24,000 p.s.i., thereby eliminating the expense of performing tensile tests of the number of pipe currently required under the table in § 195.106(b).

The change will not compromise safety because the presumed yield strength of 24,000 p.s.i. is the lowest value of yield strength ever specified for steel pipe. Thus, it is highly improbable that a value for yield strength determined by tensile testing would be less than 24,000 p.s.i.

Section 195.204 Inspection—General

The last sentence of § 195.204 would be revised to avoid the implication of gender.

Section 195.234 Welds: Nondestructive Testing

Paragraph (e) requires that 100 percent of each day's girth welds installed in certain locations must be nondestructively tested 100 percent unless impracticable, in which case at least 90 percent must be tested. Nondestructive testing must be impracticable for each girth weld not tested. Subordinate paragraphs (e)(1) through (e)(5) set out the criteria for the locations that must be nondestructively tested 100 percent unless impracticable.

Paragraph (g) requires that at pipeline tie-ins, 100 percent of the girth welds must be nondestructively tested.

RSPA proposes to amend paragraph (e) to clarify that "90 percent" pertains to the number of girth welds nondestructively tested, over their entire circumference, that were installed that day.

RSPA proposes to amend paragraph (g) to add the phrase "including tie-ins of replacement sections."

The proposed revisions would improve clarity and understanding among operators as to the percentage of girth welds that require nondestructive testing. However, the proposed revisions would not compromise safety because the change merely clarifies the intent of the regulation.

Sections 195.246 Installation of Pipe in a Ditch and 195.248 Cover Over Buried Pipeline

Under § 195.246(b), all offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place

by anchors or heavy concrete coating, or protected by an equivalent means. For offshore pipe installed under water less than 12 feet deep, as measured from mean low tide, § 195.248(a) requires a minimum cover of 36 inches in soil or 18 inches in consolidated rock, between the top of the pipe and the natural bottom, unless an underground structure prevents installation with the minimum cover, and the pipe is additionally protected to withstand anticipated external loads.

At the same time, a recently adopted rule, § 195.413(b)(3), requires operators to provide similar cover, without the exception for underground structures, over pipelines in the Gulf of Mexico and its inlets under water less than 15 feet deep, if the pipelines are exposed or a hazard to navigation (Amendment 195-47; 56 FR 63771; Dec. 5, 1991). Section 195.2 defines "hazard to navigation" as "a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water." The term "Gulf of Mexico and its inlets" is defined to include only areas under 15 feet of water.

We view § 195.246(b) as inconsistent with § 195.413(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 15 feet deep but at least 12 feet deep, because § 195.246(b) permits the pipe to be without cover or to be above the seabed if properly protected. Such pipe is a "hazard to navigation" under the definition of that term in § 195.2, and must have the minimum cover that § 195.413(b)(3) requires. In addition, §§ 195.248 (a) and (b) are inconsistent with § 195.413(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 12 feet deep. Section 195.248(a) allows pipe to be less than 12 inches below the seabed (i.e., a hazard to navigation). In certain instances, § 195.248(b) allows pipe to be without cover or less than 12 inches below the seabed. Neither condition is allowed under § 195.413(b)(3). In light of these inconsistencies, RSPA proposes to amend §§ 195.246(b) and 195.248 (a) and (b) to correct the problem.

Section 195.262 Pumping Equipment

This section prescribes minimum requirements pertaining to the use of pumping equipment located near pipeline systems, constructed of steel pipe, that are under construction or are being relocated, replaced, or otherwise changed in an existing system. Some operators and pipeline safety inspectors have stated that the intent of the current rule is not clear. RSPA proposes that the meaning of this section be clarified to

show that pumping equipment may not be installed in either location described in the regulation. The proposed change would not compromise pipeline safety since it would not alter the current interpretation of the regulation.

Section 195.304 Testing of Components

Section 195.304(b) excludes from post-construction hydrostatic testing any component that is the only item being replaced or added to a pipeline system if the component or a prototype was tested at the factory. Because § 195.2 defines "component" to include pipe, RSPA's review revealed that the exception in § 195.304(b) could be understood to cover pipe. An examination of § 195.304(a) shows, however, that the terms pipe and component are used distinctly in § 195.304. Therefore, only components other than pipe may qualify for exclusion from hydrostatic testing under § 195.304(b). To clarify this point, we propose to amend the introductory clause of § 195.304(b) as set forth below by adding the words "other than pipe" following "component."

Section 195.412 Inspection of Rights-of-Way and Crossings Under Navigable Waters

Section (a) requires an operator, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, to inspect the surface conditions on or adjacent to each pipeline right-of-way. RSPA proposed that the section be changed to indicate that aerial patrols are an optional method of compliance. The proposed change would clarify the permitted use of this option for operators who may not be aware that flying the right-of-way of hazardous liquid and carbon dioxide pipelines is acceptable. Some surface condition activities adjacent to the right-of-way, that affect the safety and operation of pipelines, are more visible from an aerial patrol than from walking or driving the right-of-way.

Section (b) requires operators, at intervals not exceeding 5 years, to inspect each crossing under a navigable waterway (except offshore) to determine the condition of the crossing. The purpose of the inspection is to look for any damage, unanticipated loading, or loss of protection that could threaten the safety of the pipeline. Our review shows that this requirement is more appropriate for crossings installed by trenching or jetting than it is for most crossings that are "bored". Bored crossings are usually so deep that there is little likelihood the pipeline could be affected by waterway-related events, such as scouring or anchor dragging.

Thus, we are proposing to add an exception to § 195.412(b) to cover bored crossings that are too deep to be subject to waterway-related damage.

Section 195.416 External Corrosion Control

Paragraph (a) of this section states that each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each underground facility that is under cathodic protection to determine whether the protection is adequate. RSPA proposes to clarify the rule to reduce any misunderstanding regarding what is meant by "underground". The word "underground" in this paragraph means any facility that is buried or in contact with the ground. This rule clarification will not change the burden required by paragraph (a) because RSPA compliance inspectors have consistently required any facility in contact with the ground to be cathodically protected.

Paragraph (f) requires that any pipe found to be generally corroded so that the remaining wall thickness is less than the minimum thickness required by the pipe specification tolerances must either be replaced with coated pipe that meets the requirements of this part or, if the area is small, must be repaired. However, the operator need not replace generally corroded pipe if the operating pressure is reduced to be commensurate with the limits on operating pressure specified in this subpart, based on the actual remaining wall thickness.

Paragraph (g) states that if localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

RSPA recognizes that paragraphs (f) and (g) provide no guidance for an operator's use in determining the strength of the actual remaining wall thickness of corroded steel pipe. To provide this needed guidance, RSPA proposes the adoption of the ASME Manual B31G procedure for determining the remaining strength of corroded steel pipe in existing pipelines. Application of the procedure would be in accordance with the limitations set out in the B31G Manual. The proposal would provide guidance as to whether a corroded region (not penetrating the pipe wall) may be left in service; an option that might require a reduction in maximum allowable operating pressure, but may be more economical than the replacement or repair of the corroded pipe. The proposed revision would not compromise safety because it merely

accepts an established pipeline industry guidance, and does not impose any new requirements on the operators.

Rulemaking Analyses

Paperwork Reduction Act

The documentation for the information collection requirements for part 195 was submitted to the Office of Management and Budget (OMB) during the original rulemaking processes. Currently, regulations in part 195 are covered by OMB Control Numbers 2137-0047 (approved through May 31, 1994), 2137-0578 (approved through October 31, 1994) and 2137-0583 (approved through May 31, 1994). This notice proposed no additional information collection requirements. Instead, the notice proposed to relax the information collection or retention and record retention burden on pipeline operators (described above). Accordingly, there is no need to repeat those submissions with this notice of proposed rulemaking.

E.O. 12291 and DOT Regulatory Policies and Procedures

RSPA has concluded that this proposal is not a major rule under Executive Order 12291 and it is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A Regulatory Evaluation has been prepared and is available in the docket. RSPA estimates the proposed changes to existing rules would result in an estimated savings of \$1,534,000 per year for the hazardous liquid pipeline industry at no cost to the industry, and with no adverse effect on safety. As discussed above, these savings would come largely from the use of new technology, greater flexibility in constructing and operating pipelines, and the elimination of unnecessary requirements.

Regulatory Flexibility Act

RSPA criteria for small companies or entities are those with less than \$1,000,000 in revenues and are independently owned and operated. Few of the companies subject to this rulemaking meet these criteria. However, RSPA seeks such impact information in response to this rulemaking. Accordingly, based on the facts available concerning the impact of this proposal, I certify under section 605 of the Regulatory Flexibility Act that this proposal would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

E.O. 12612

RSPA has analyzed the proposed rules under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR Part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

2. In § 195.1, the introductory text of paragraph (b) would be republished, paragraph (b)(5) would be revised, in paragraph (b)(6) a hyphen would be added between the words "in" and "plant", and paragraphs (b)(7) and (b)(8) would be revised to read as follows:

§ 195.1 Applicability.

* * * * *

(b) This part does not apply to—

* * * * *

(5) Transportation of a hazardous liquid or carbon dioxide in offshore pipelines which are located upstream from the outlet flange of each facility where hydrocarbons or carbon dioxide

are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

* * * * *

(7) Transportation of hazardous liquid or carbon dioxide—

(i) By vessel, aircraft, tank truck, tank car, or other nonpipeline mode of transportation; or

(ii) Through facilities, located on the grounds of a materials transportation terminal, that are used exclusively to transfer hazardous liquid or carbon dioxide between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline, not including any device and associated piping that are necessary to control pressure in the pipeline.

(8) Transportation of carbon dioxide downstream from the following point, as applicable:

(i) The inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is further upstream; or

(ii) If paragraph (b)(8)(i) of this section does not apply, the connection of the first branch pipeline in the production field that transports carbon dioxide to injection wells or to headers or manifolds from which pipelines branch to injection wells.

* * * * *

3. In § 195.2, the introductory text would be republished, definitions of *In-plant piping system*, *Petroleum*, and *Petroleum product* would be added and the definition of *Secretary* would be revised:

§ 195.2 Definitions.

As used in this part—

* * * * *

In-plant piping system means piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline, not including any device and associated piping that are necessary to control pressure in the pipeline.

* * * * *

Petroleum means crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas.

Petroleum product means flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds.

* * * * *

Secretary means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

* * * * *

4. In the list below, for each section indicated in the left column, the phrase indicated in the middle column would be removed and the phrase indicated in the right column would be added:

Section	Remove	Add
195.2 Gathering Line.....	8 inches or less in nominal diameter.....	8½ inches or less in nominal outside diameter
195.112(c).....	an outside diameter of 4 inches or more.....	A nominal outside diameter of 4½ inches or more.
195.212(b)(3)(ii).....	The pipe is 12 inches or less in outside diameter.....	The pipe is 12½ inches or less in nominal outside diameter.
195.413(a).....	Except for gathering lines of 4 inch nominal diameter or smaller.	Except for gathering lines of 4½ inches nominal outside diameter or smaller.

5. Section 195.3 would be amended by revising paragraph (a) and by adding paragraph 195.3(c)(2)(iii) to read as follows:

§ 195.3 Matter incorporation by reference.

(a) Any document or portion thereof incorporated by reference in this part is included in this regulation as though it were printed in full. When only a portion of a document is referenced, then this part incorporates only that referenced portion of the document and the remainder is not incorporated. Applicable editions are listed in paragraph (c) of this section in parentheses following the title of the referenced materials. Earlier editions

listed in previous editions of this section may be used for components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR for a listing of the earlier editions.

* * * * *

(c) * * *

(2) * * *

(iii) ASME Code for Pressure Piping B31.8, "Gas Transmission and Distribution Piping Systems" (1989 Edition with Addenda A, B, C).

* * * * *

6. Section 195.5 would be amended by revising paragraphs (a)(1) and (a)(4) to read as follows:

§ 195.5 Conversion to service subject to this part.

(a) * * *

(1) The design, construction, operation, and maintenance history of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in satisfactory condition for safe operation. If one or more of the variables necessary to verify the design pressure under § 195.106 or to perform the testing under paragraph (a)(4) of this

section is unknown, the design pressure may be verified and the maximum operating pressure determined by:

(i) Testing the pipeline in accordance with ASME B31.8, Appendix N, to produce a stress equal to the yield strength, and

(ii) Applying, to not more than 80 percent of the first pressure that produces a yielding the design factor F in § 195.106(a) and the appropriate factors in § 195.106(e).

* * * * *

(4) The pipeline must be tested in accordance with subpart E of this part to substantiate the maximum operating pressure permitted by § 195.406.

* * * * *

7. In § 195.8, the last sentence would be revised to read as follows:

§ 195.8 Transportation of hazardous liquid or carbon dioxide in pipelines constructed with other than steel pipe.

* * * * *

If the Secretary determines that the transportation of the hazardous liquid or carbon dioxide in the manner proposed would be unduly hazardous, the Secretary will, within 90 days after the receipt of the notice, order the person that gave the notice, in writing, not to transport the hazardous liquid or carbon dioxide in the proposed manner until further notice.

8. Section 195.50(f) would be revised to read as follows:

§ 195.50 Reporting accidents.

* * * * *

(f) Estimated total property damage to the property of the operator or others, or both, exceeding \$50,000.

9. Section 195.52(a)(3) would be revised to read as follows:

§ 195.52 Telephonic notice of certain accidents.

(a) * * *

(3) Caused estimated total damage to the property of the operator or others, or both, exceeding \$50,000;

* * * * *

10. Section 195.106(b) would be revised to read as follows:

§ 195.106 Internal design pressure.

* * * * *

(b) The yield strength to be used in determining the internal design pressure under paragraph (a) of this section is the specified minimum yield strength. If the specified minimum yield strength is not known, the yield strength to be used in the design formula is one of the following:

(1) The yield strength determined by performing all of the tensile tests of API Specification 5L on randomly selected

specimens with the following number of tests:

Pipe size	Number of tests
Less than 6% inches in nominal outside diameter.	One test for each 200 lengths.
6% through 12% inches in nominal outside diameter.	One test for each 100 lengths.
Larger than 12% inches in nominal outside diameter.	One test for each 50 lengths.

If the average yield-tensile ratio exceeds 0.85, the yield strength shall be taken as 24,000 p.s.i. If the average yield-tensile ratio is 0.85 or less, the yield strength of the pipe is taken as the lower of the following:

(i) Eighty percent of the average yield strength determined by the tensile tests.

(ii) The lowest yield strength determined by the tensile tests.

(2) If the pipe is not tensile tested as provided in paragraph (b) of this section, the yield strength shall be taken as 24,000 p.s.i.

* * * * *

11. In § 195.106(c), the last sentence would be revised to read as follows:

§ 195.106 Internal design pressure.

* * * * *

(c) * * * However, the nominal wall thickness may not be more than 1.14 times the smallest measurement taken on pipe that is less than 20 inches in nominal outside diameter, nor more than 1.11 times the smallest measurement taken on pipe that is 20 inches or more in nominal outside diameter.

* * * * *

12. In § 195.204, the last sentence would be revised to read as follows:

§ 195.204 Inspection—general.

* * * No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected.

13. Section 195.234 would be amended by revising the introductory text of paragraph (e) and by revising paragraph (g) to read as follows:

§ 195.234 Welds: Nondestructive testing.

* * * * *

(e) One hundred percent of each day's girth welds installed in the following locations must be nondestructively tested over their entire circumference unless impracticable, in which case at least 90 percent of the number of welds installed each day must be tested over their entire circumference. Nondestructive testing must be

impracticable for each girth weld not tested:

* * * * *

(g) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent of the girth welds must be nondestructively tested.

14. Section 195.246 would be amended by revising paragraph (b) to read as follows:

§ 195.246 Installation of pipe in a ditch.

* * * * *

(b) Except for pipe in the Gulf of Mexico and its inlets, all offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means.

15. Section 195.248 would be amended by revising in the table in paragraph (a), the language "Other offshore areas under water less than 12 ft-deep as measured from the means low tide" to read "Gulf of Mexico and its inlets under water less than 15 ft-deep and other offshore areas under water less than 12-ft deep as measured from the mean low tide" and by revising paragraph (b) introductory text to read as follows:

§ 195.248 Cover over buried pipeline.

* * * * *

(b) Except for the Gulf of Mexico and its inlets, less cover than the minimum required by paragraph (a) of this section and § 195.210 may be used if—

* * * * *

16. Section 195.262(d) would be revised to read as follows:

§ 195.262 Pumping equipment.

* * * * *

(d) Except for offshore pipelines, pumping equipment may not be installed in either of the following locations:

(1) Property that is not under the control of the operator.

(2) Property that is less than 50 feet from the boundary of the pump station.

* * * * *

17. The introductory text of § 195.304(b) would be revised to read as follows:

§ 195.304 Testing of components.

* * * * *

(b) A component, other than pipe, that is the only item being replaced or added to the pipeline system need not be hydrostatically tested under paragraph

(a) of this section if the manufacturer certifies that either—

* * * * *

18. Section 195.412 would be revised to read as follows:

§ 195.412 Inspection of rights-of-way and crossings under navigable waters.

(a) Each operator shall, at intervals not exceeding 3 weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

(b) Each operator shall, at intervals not exceeding 5 years, inspect each crossing under a navigable waterway to determine the condition of the crossing.

However, this paragraph does not apply to offshore pipelines or to bored crossings that are too deep to anticipate damage from waterway conditions or vessel traffic.

19. Section 195.416 would be amended by revising paragraph (a), redesignating paragraph (h) as paragraph (i), and adding a new paragraph (h) to read as follows:

§ 195.416 External corrosion control.

(a) Each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each buried or submerged pipeline facility in its pipeline system that is under cathodic protection to determine whether the protection is adequate.

* * * * *

(h) The strength of the pipe, based on actual remaining wall thickness, for paragraphs (f) and (g) of this section may be determined by the procedure in ASME B31G manual for Determining the Remaining Strength of Corroded Pipelines. Application of the procedure in the B31G manual shall apply to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the B31G manual.

(i) * * *

Issued in Washington, DC, on November 19, 1992.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 92-28493 Filed 11-25-92; 8:45 am]

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Notices

Federal Register

Vol. 57, No. 229

Friday, November 27, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Senior Companion Program

Availability of New Project Funds

AGENCY: ACTION.

ACTION: Notice of Availability of Funds; Senior Companion Program.

ACTION, the Federal Domestic Volunteer Agency, announces the availability of funds during the fiscal year 1993 for approximately three new projects under the Senior Companion Program authorized by the Domestic Volunteer Service Act of 1973, as amended (P.L. 93-113, title II, part C, 42 U.S.C. 5013). Since 1974, the Senior Companion Program has expanded to over 144 projects that provide services to over 7,780 budgeted volunteers serving more than 35,000 adults with special or exceptional needs.

Funds for new projects appropriated by Congress for the Senior Companion Program are available for beginning new volunteer services by low-income individuals 60 years of age and over (Senior Companion Volunteers). Senior Companions are assigned on a one-to-one basis, to serve adults in need of non-medical, voluntary assistance with one or more Activities of Daily Living (ADL) to continue independent living in the least restrictive environment possible, primarily in their own homes. Grants will be awarded within targeted high need and unserved or underserved geographical areas on a national competitive basis. Grants are renewable annually in accordance with program regulations.

DATES: Applications must be received no later than 5:00 p.m. local standard time on January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Endres, Senior Companion Program Officer, ACTION, 1100 Vermont Avenue, NW, room 6100, Washington, DC 20525, (202) 606-4853.

I. Application Requirements

One signed original and two copies of completed applications must be received in the appropriate ACTION State Office no later than 5 p.m. local standard time on January 27, 1993. Only those applications that are received at the appropriate ACTION State Office on this date will be eligible. Eligible applications will be reviewed as a best and final offer.

All grant applications must consist of:

1. Application for Federal Assistance (ACTION Form 424-OA (12/90) with narrative, budget justification, a detailed work plan, and required assurances stated in the application form, including compliance with handicap accessibility as required by the Rehabilitation Act of 1973 and ACTION regulation 45 CFR 1232.

2. Statement that identifies previous ACTION funding (type, year, and amount) or a statement that applicant has not previously received funding from ACTION.

3. CPA certification of accounting capability.

4. Articles of Incorporation, including the page that contains the State seal.

5. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

6. Items 3, 4, and 5 above are not required for public agencies of State and local government.

Hearing impaired individuals may contact ACTION's TDD Number, (202) 606-5256. This announcement, application materials and guidance may be provided in alternative formats for the visually impaired by calling (202) 606-4855.

To receive an application kit, please contact the appropriate ACTION State Program Office. Following this announcement is a list of ACTION Regional Offices, along with the addresses and telephone numbers of the ACTION State Program Offices under their jurisdiction.

II. New Projects Criteria

The Senior Companion Program (SCP) projects will focus on Senior Companion service to assist homebound elderly to remain in their own homes or to sustain independent living through participation in community based adult day care facilities. New projects will be located in areas, both urban and rural, with concentrations of homebound elderly

citizens. Young and middle-aged adults with developmental disabilities are not included in the "at risk" populations under this announcement.

III. Eligibility

Only applications from private non-profit incorporated organizations and public agencies will be eligible.

Applications from high need and unserved or underserved geographical areas within the underfunded states of Illinois, Virginia, and Texas will receive priority consideration because these States are underfunded by more than 25 percent according to the Agency's established Resource Allocation Formula.

Community-based, local sponsors are preferred because they are most frequently able to fulfill sponsorship responsibilities based on knowledge of and experience with the local community to be served, its needs as well as non-Federal sources of support available.

Publication of this announcement does not obligate ACTION to award any specific number of grants. Application kits and technical assistance concerning application procedures are available from ACTION State Offices listed below. Because this is a national competition, ACTION State Offices may provide technical assistance on application requirements, but not on program design or development.

IV. Selection

A. General

1. **Project Size:** Applicants must demonstrate the capacity to support a minimum of twenty (20) volunteer service years (VSYs). A project size between forty and sixty volunteer service years is preferred to achieve visibility, measurable impact, and the necessary base around which local support can be developed. A full-time Project Director is required for projects requesting 40 to 60 VSYs. Projects requesting fewer than 40 VSYs shall budget at least a half-time (50 percent) Project Director. A request for waiver of the requirement for a full-time project director should be submitted, with detailed justification, as part of the application and will be considered as part of the application review.

2. **Stations:** Each application should contain Letters of Commitment or Intent

from a minimum number of potential stations equal to 10 percent of the requested VSYs. A minimum of three Senior Companions, serving 20 hours per week, should be assigned to each station. Applications containing fewer Letters of Intent will be accepted, but must contain written explanation. Volunteer stations shall be community-based organizations committed to assisting home-bound elderly remain in their own homes or to sustain independent living through community based adult day care facilities. A maximum of 25 percent of the volunteer service years requested shall be assigned to adult day care facilities. Nursing and boarding homes and institutional care settings may not be volunteer stations under this announcement.

3. The defined service area may be located in both urban and rural settings with a sufficient pool of eligible volunteers, adults experiencing difficulty with ADLs, volunteer stations, and non-Federal resources to sustain the project over time. A service area with one city of at least 50,000 and not larger than three counties is preferred.

4. Potential sponsors must have proven project and financial management capability and demonstrate compliance with SCP Regulations; guidance; and Public Law 93-113, Title II, Part C.

5. Potential sponsors must demonstrate:

- a. Collaborative approaches/efforts with community agencies and organizations;
- b. Organizational mission compatible with that of the Senior Companion Program;
- c. Organizational approach which encourages and empowers the community to solve its own problems and improve the quality of life for its citizens, especially older adults;
- d. Capacity to build on a Federal partnership by working to increase service opportunities for low-income adults through non-Federal means;
- e. Capacity to assure participation from all segments of the community, including hard-to-reach males, minority, ethnic, isolated elderly and persons with disabilities.

B. Special Criteria

- 1. In addition to the above, selection will be based on the applicant's:
 - a. Adherence to SCP regulations and guidance;
 - b. Identification of needs to be addressed;
 - c. Defined goals, detail of activities designed to reach the goals, and realistic time schedule for attainment;

d. Quality of proposed volunteer activities and services.

V. Grant Review Process

Applications submitted under this announcement will be reviewed and evaluated by their respective ACTION State and Regional Offices and the Division of Older American Volunteer Programs, ACTION, Washington. ACTION's Assistant Director for Older American Volunteer Programs will make the final selections. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

The Assistant Director for Older American Volunteer Programs may use additional factors in choosing among applicants which meet the General and Specific criteria specified above, such as:

- 1. Geographical distribution;
- 2. Applicant's access to alternative resources;
- 3. Allocation of SCP funds in relation to other ACTION funds.

VI. Program Philosophy

A grant is awarded to a community based private, non-profit or public organization which accepts responsibility for the operation of the project. The organization receiving an ACTION grant is designated as the project *sponsor* of the Senior Companion Program. Through the Sponsor, local communities determine what Senior Companion volunteers do in response to local needs for targeted services.

A Senior Companion Project Sponsor is usually a broker of volunteer resources. Project Sponsors assign Senior Companion volunteers to other non-profit or public organizations designated as *volunteer stations* which accept the responsibility for assignment and daily supervision of Senior Companion Volunteers. Organizations and agencies which provide in-home or community based direct services to elderly adults are usually more appropriate as volunteer stations rather than as project sponsors. Restrictions apply to the use or assignment of Senior Companion Volunteers within the Sponsoring organization and its programs.

Volunteer Stations assign Senior Companions to adults served through a written plan of care, supervise volunteer activities and provide volunteer support. Care plans describe appropriate volunteer activities which support the primary role of the Senior Companion—providing companionship. Not more than 20 percent of the available

volunteers should be assigned through any one station.

The goals of the Senior Companion Program are to:

- 1. Develop volunteer service opportunities through which low-income older persons can contribute to their communities;
- 2. Provide a stipend and other benefits which enable eligible persons to participate as Senior Companions;
- 3. Establish new social service roles for low-income older persons through which they can maintain a sense of self-worth, retain physical health and mental alertness, and enrich their social contacts; and
- 4. Provide supportive services through one-to-one relationship to adults, especially older adults with special and exceptional needs, in an effort to achieve and to maintain independent living.

Appropriate Senior Companion activities include personal care, nutrition, social recreation, home management, information and advocacy and respite care. In order of priority, assignments are preferred which:

- 1. Assist in preventing or delaying inappropriate institutionalization of homebound adults experiencing difficulty with one or more routine activities of daily living and who need informal, outside assistance with that activity to continue living independently at home;
- 2. Provide volunteer support to households in which the burden of care for aged persons rests with household members who find it difficult to provide the level of care needed to maintain stable social lives and a positive mental attitude;
- 3. Assist terminally ill persons in their homes through free standing hospice or medical institutions with home-based care units;
- 4. Assist local service agencies to provide community based adult day care, in support of continued living in the least restrictive setting possible.

VII. Basic Program Elements

A. Development of volunteer service opportunities that foster the independence of Senior Companions.

B. Assignment of Senior Companions to volunteer stations which fully utilize their skills, training and life experiences.

C. Integration of all Senior Companions into individualized written care plans that address the social and health needs of clients. This is based on the philosophy that Companions can be most effective with their clients when they are involved in the implementation

of a preventive and/or rehabilitative plan of care.

D. Assignments that foster greater participation of hard-to-reach minority, ethnic, and isolated older people, as Senior Companion volunteers.

E. Development of Senior Companion projects are to serve elderly clients who are:

1. Scheduled for discharge from acute care hospitals;
2. Homebound and served by caregivers in need of respite to prevent a breakdown in the household capability to provide care and prevent institutionalization;
3. Homebound living alone at risk of being institutionalized;
4. Psychologically disabled;
5. Experiencing problems with substance abuse;
6. Terminally ill and living at home;
7. Visually handicapped and living at home.

VIII. Highlighted Sponsor Responsibilities

A. Recruitment of Senior Companions

Special efforts will be directed to recruit males and hard-to-reach minority, ethnic, isolated and disabled older people.

B. Sponsor Placement of Senior Companions—Service Activities

1. Give support to older clients through person-to-person assignments.
2. Participate in and monitor initial and continuing client needs assessments and appropriate in-home services contained in written care plans.

C. Sponsor Development of Volunteer Stations

1. Volunteer stations may be community direct health care providers or social service organizations with direct links to health care providers.
2. Nursing homes and board and care settings may not be volunteer stations.
3. Homebound elderly clients served by these stations will have one or more of the following impairments:
 - a. Not fully ambulatory;
 - b. Unable to take care of personal needs unassisted;
 - c. Disabled from disease(s) likely to cause increased impairment.
4. Not more than 20 percent of the available volunteers should be assigned through any one station.
5. Volunteer stations must demonstrate the capability to provide specialized training needed by Senior Companions for their assignments.
6. Volunteer stations must have sufficient clients to ensure utilization of a minimum of three Senior Companions, each serving 20 hours per week.

D. Volunteer Station Responsibilities

1. Client needs assessments, care plan development, supervision of Senior Companions, special transportation arrangements.
2. Applications must include Letters of Intent containing specific statements that:
 - a. Detail provisions of daily supervision;
 - b. Identify potential volunteer support resources;
 - c. Assure sufficient clients are available to utilize volunteers 20 hours per week.

E. Description of Clients Served

1. Clients will be older adults with physical, emotional and/or mental health problems who need the help of a Senior Companion to maintain independent or semi-independent living arrangements in their homes.
2. Young and middle-aged adults with developmental disabilities are not included in "at risk" populations for these projects nor are older adults who reside in group living settings.

F. Service Area

In cases of large service areas, especially in rural areas, program activities must be focused where volunteer support is available.

G. Orientation and In-Service Training

Projects are encouraged to use Community Volunteer Trainers. These are active professionals or retired persons with health and social service skills able to train Senior Companions in monitoring initial and continuing needs and appropriate in-home services for their clients. Trainers do not supervise Senior Companions. They serve without compensation.

IX. Specific Criteria for Volunteer Stations

Projects have the option to select stations which conform to criteria in one or more of the seven emphasis areas listed below:

A. Acute Care Hospitals/Discharge Planning

1. Purpose: To assign Senior Companions to older acute care hospital clients discharged to their homes and scheduled to receive home care.
2. Volunteer Stations
 - a. Type (partial listing) (1) Acute care hospitals;
 - (2) Social service discharge planning, outpatient or home health divisions of hospitals;
 - (3) Certified home health agencies with links to acute care hospitals;

(4) Aging/social service organizations with home care management capabilities with links to acute care hospitals;

(5) City, county and district public health departments with links to acute care hospitals.

3. Program Elements

a. Senior Companion services to clients include participation in patient discharge and home health continuity of care programs. These are developed under the supervision of skilled health and social service professionals who may or may not be employed by hospitals.

b. Assignment activities include, but are not limited to:

- (1) Household management;
- (2) Personal care service;
- (3) Coordination of needed services with community health and social service agencies;
- (4) Advocacy for the personal needs of clients;
- (5) Peer support.

B. Respite Care

1. Purpose: To assign Senior Companions to older homebound clients who need their support and that of a primary caregiver to delay or prevent premature institutionalization. Companion services will be directed to one primary client per household and to caregivers, secondarily.

2. Volunteer Stations

- a. Type (partial listing) (1) City/county family social service agencies;
- (2) Private nonprofit family social service agencies;
- (3) Senior centers with case management staff specialists;
- (4) Visiting nurse associations;
- (5) Adult day health care service organizations with home care service supervision;
- (6) Home health agencies.

3. Program Elements

a. In order to serve the neediest persons, clients served should have at least one of the following characteristics:

- (1) Not fully ambulatory;
- (2) Unable to take care of personal needs;

(3) Disease(s) likely to cause increased impairment.

b. The caregiver must live in the home and be available to provide 24-hour care.

c. Priority will be given to a client with an elderly spouse or an elderly offspring who is the primary caregiver.

d. A client in need of respite services should have caregivers who have reached the stage where the burden of caregiving poses threats to their ability

to maintain stable social lives and a positive mental attitude.

e. Care plans will:

- (1) Define separate activities for Senior Companion and caregiver;
- (2) Include Senior Companion activities critical to the client's well-being;
- (3) Retain the flexibility to accommodate different caregiving needs during respite periods.

f. Prior to assignment, each Companion will spend a minimum of four (4) hours in the home with the client and caregiver observing routine care.

g. Neither clients nor caregivers may employ enrolled Companions or be charged for Companion services.

h. Companions may *not*:

(1) Do housework that ordinarily would be performed by household members, homemakers or paid domestic help such as scrubbing walls and floors, or washing windows;

(2) Provide personal services to family members apart from client-related activities; or

(3) Simply "sit with" a client while a primary caregiver is out of the house.

C. Homebound Clients Living Alone

1. Purpose

To assign Senior Companions to older homebound clients who:

a. Live alone and are at risk of institutionalization.

b. Have at least two of the following characteristics:

- (1) Disease(s) likely to cause increased impairment;
- (2) Not fully ambulatory;
- (3) Unable to take care of personal needs unassisted;
- (4) Acute home management problems;
- (5) History of frequent hospitalizations.

2. Volunteer Stations

- a. *Type (partial listing)* (1) Public health departments;
- (2) Aging/social service organizations with home case management capabilities;
- (3) Home health agencies.

3. Program Elements

a. Senior Companion services are directed to older homebound persons, living alone, at risk of institutionalization.

b. Senior Companion activities emphasis is on:

- (1) Personal care needs;
- (2) Home management;
- (3) Relief of social isolation;
- (4) Coordination of needed services with community health and social service agencies;

(5) Assistance with exercise and therapy;

(6) Establishment and encouragement of links with relatives and close friends.

c. This emphasis area is to be used only for clients with multiple health and social problems, and at high risk of institutionalization, who do not fit into other special population categories.

D. Mental Health

1. Purpose

To assign Senior Companions to psychologically disabled older persons.

2. Volunteer Stations

a. *Type (partial listing)* (1) City/county/community mental health centers;

(2) Outpatient psychiatric hospital clinics.

3. Program Elements

a. Senior Companion services to clients include:

- (1) Development of supportive living and socialization arrangements;
- (2) Assisting institutionalized older patients prepare for re-entry and return to the community;
- (3) Providing care to clients with depression disorders that make them vulnerable to hospitalization;
- (4) Monitoring medication;
- (5) Reality orientation;
- (6) Active listening;
- (7) Coordination of client needs with community health and social service agencies.

b. Clients can include those who have never been institutionalized who have chronic mental health problems. This includes persons able to function outside the home, as well as the homebound. Clients may also be homeless.

c. Senior Companions provide backup support to families and other caregivers.

E. Substance Abuse

1. Purpose

To assist older persons with past or present drug or alcohol-related problems.

2. Volunteer Stations

- a. *Type (partial listing)* (1) City/county public health departments;
- (2) Alcoholics Anonymous;
- (3) Detoxification units of Veterans or acute care hospitals;
- (4) Hospital outpatients clinics;
- (5) Area councils on alcoholism and drug abuse.

3. Program Elements

a. Senior Companion activities may include:

(1) Providing information to clients on the use, misuse and abuse of prescription drugs and alcohol;

(2) Accompanying clients to Alcoholics Anonymous and similar peer support meetings;

(3) Encouraging spouse or other caregivers to attend Alcoholics Anonymous and similar peer support meetings.

F. Care of the Terminally Ill

1. Purpose:

To serve terminally ill elderly clients in their homes.

2. Volunteer Stations

a. *Type (partial listing)* (1) Free standing hospice with home care unit;

(2) Medical institution with a home-based program;

(3) Licensed/certified home health agency;

(4) Public health department.

b. A minimum of two Senior Companions must be assigned to each station.

3. Program Elements

a. Only persons with a special interest in serving terminally ill clients should be selected.

b. Volunteers who have the emotional stamina and the desire to serve only terminally ill clients may do so. However, volunteers may also serve clients who are not terminally ill through:

- (1) The assigned volunteer station; or
- (2) A second volunteer station. This may not be an institution.

c. Senior Companions must be monitored for emotional stability during training, through the assignment and interviewed after each termination of assignment to a terminally ill client.

d. Senior Companions may not be the primary caregiver.

e. Senior Companions may serve family members during bereavement period.

f. Senior Companions have the option of attending the client's funeral. Attendance, in this case, is allowable in the 20-hour weekly schedule.

g. Hospice Care:

(1) Senior Companions must be assigned to a licensed/certified hospice care organization.

(2) Senior Companions must be integrated into the hospice care team, included in team meetings and receive team support.

h. Non-Hospice Care:

(1) Clients must be determined by a licensed physician to be in the final stages of terminal illness.

(2) Senior Companions must be closely supervised and given emotional support by the volunteer station Supervisor.

G. Alzheimer's

1. Purpose

To serve the elderly suffering from Alzheimer's disease.

2. Volunteer Stations

- a. *Type (partial listing)* (1) Medical institution with a home-based program;
- (2) Licensed/certified home-health agency;
- (3) Public health department.

H. Visually Impaired

1. Purpose

To assign Senior Companions to blind/visually impaired older persons.

2. Volunteer Stations

- a. *Type (partial listing)* (1) Independent Living Centers for the visually disabled;
- (2) Community-based rehabilitation/treatment agencies;
- (3) City, county and district public health agencies;
- (4) Certified home health agencies.

3. Program Elements

a. Clients served must experience functional/ visual loss due to at least one of the following:

- (1) Muscular degeneration;
- (2) Glaucoma;
- (3) Cataracts;
- (4) Diabetic retinopathy;
- (5) Accidents or injuries;
- (6) Damage to optic nerves from strokes, tumors, etc.;
- (7) Dry eye syndrome.

b. *Senior Companion Services to clients include:* (1) Reinforcement of mobility, orientation and compensatory rehabilitation techniques;

- (2) Reading and transportation assistance;
- (3) Home management;
- (4) Coordination of needed services with community health and social service agencies;
- (5) Peer counseling/companionship.

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Program Offices under their jurisdiction:

ACTION State Program Offices

Region I

ACTION State Office, 1 Commercial Plaza, 21st Floor, Hartford, CT 06103-3510 ** 203/240-3237

ACTION State Office, 10 Causeway Street, Room 473, Boston, MA 02222-1039 ** 617/565-7018

ACTION State Office, U.S. Court House, 76 Pearl Street—Room 305, Portland, ME 04101-4188 ** 207/780-3414

ACTION State Office, The Whitebridge, 91-93 N. State Street Concord, NH 03301 ** 603/225-1450

ACTION State Office, 10 John O. Pastore, Federal Office Building, 2 Exchange Terrace, Room 232, Providence, RI 02903-1758 ** 401/528-5424

Region II

ACTION State Office, 44 S. Clinton Avenue, Suite 702, Trenton, NJ 08609-1507 ** 609/989-2243

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048-0206 ** 212/466-4471

ACTION State Office, Leo O'Brien Federal Building, Clinton Avenue and N. Pearl Street, Room 818, Albany, NY 12207 ** 518/472-3664

ACTION State Office, U.S. Federal Building, 150 Carlos Chardon Avenue, Suite G-49, Hato Rey, PR 00918-1737 ** 809/766-5314

Region III

ACTION State Office, Federal Building, 600 Martin Luther King, Jr. Place, Room 372-D, Louisville, KY 40202-2230 ** 502/582-6384

ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201-2814 ** 410/962-4443

ACTION State Office, Leveque Tower, 50 W. Broad Street, Room 304A, Columbus, OH 43215 ** 614/469-7441

ACTION State Office, Gateway Building, 3535 Market Street, Room 2460, Philadelphia, PA 19104 ** 215/596-4077

ACTION State Office, 400 N. 8th Street, Room 1119, Richmond, VA 23240-1832 ** 804/771-2197

ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301-1409 ** 304/347-5246

Region IV

ACTION State Office, Beacon Ridge Tower, 600 Beacon Parkway West, Room 770, Birmingham, AL 35209-3120 ** 205/290-7184

ACTION State Office, 3165 McCrory Street, Suite 115, Orlando, FL 32803-3750 ** 407/648-6117

ACTION State Office, 75 Piedmont Avenue, NE, Suite 462, Atlanta, GA 30303-2587 ** 404/331-4646

ACTION State Office, Federal Building, 100 W. Capitol Street, Room 1005-A, Jackson, MS 39269-1092 ** 601/965-5664

ACTION State Office, Federal Building, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601-1739 ** 919/856-4731

ACTION State Office, Federal Building, 1565 Assembly Street, Room 872, Columbia, SC 29201-2430 ** 803/765-5771

ACTION State Office, 265 Cumberland Bend Drive, Nashville, TN 37228 ** 615/736-5561

Region V

ACTION State Office, 77 W. Jackson Boulevard, Suite 442, Chicago, IL 60604 ** 312/353-3622

ACTION State Office, 46 E. Ohio Street, Room 457, Indianapolis, IN 46204-1922 ** 317/226-6724

ACTION State Office, Federal Building, 210 Walnut, Room 722, Des Moines, IA 50309-2195 ** 515/284-4816

ACTION State Office, Federal Building, 231 W. Lafayette Boulevard, Room 658, Detroit, MI 48226-2799 ** 313/226-7848

ACTION State Office, 413 S. 7th Street, Room 2480, Minneapolis, MN 55415 ** 612/334-4083

ACTION State Office, 310 W. Wisconsin Avenue, Room 1240, Milwaukee, WI 53202 ** 414/291-1118

Region VI

ACTION State Office, Federal Building, 700 W. Capitol Street, Little Rock, AR 72201-3291 ** 501/324-5234

ACTION State Office, Federal Building, 444 SE Quincy, Room 248, Topeka, KS 66603-3501 ** 913/295-2540

ACTION State Office, 640 Main Street, Suite 102, Baton Rouge, LA 70801 ** 504/389-0471

ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64108 ** 816/426-5256

ACTION State Office, First Interstate Plaza, 125 Lincoln Avenue, Suite 214-B, Santa Fe, NM 87501-2026 ** 505/988-6577

ACTION State Office, 420 W. Main, Suite 530, Oklahoma City, OK 73102 ** 405/231-5201

ACTION State Office, 611 E. 6th Street, Suite 404, Austin, TX 78701-3747 ** 512/482-5671

Region VII

(Incorporated into other Regions)

Region VIII

ACTION State Office, One Sherman Place, 140 E. 19th Street, Suite 120, Denver, CO 80203 ** 303/866-1070

ACTION State Office, Federal Office Building, 301 S. Park, Room 192, Drawer 10051, Helena, MT 59626-0101 ** 406/449-5404

ACTION State Office, Federal Building, 100 Centennial Mall North, Room 156, Lincoln, NE 68508-3896 ** 402/437-5493

ACTION State Office, Federal Building, 225 S. Pierre Street, Room 225, Pierre, SD 57501-2452 ** 605/224-5996

ACTION State Office, Frank E. Moss U.S. Courthouse, 350 S. Main Street, Room 505, Salt Lake City, UT 84101 ** 801/524-5411

Region IX

ACTION State Office, 522 N. Central, Room 205-A, Phoenix, AZ 85004-2190 ** 602/379-4825

ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105-1914 ** 415/744-3015

ACTION State Office, Federal Building, 1100 Wilshire Boulevard, Room 11221, Los Angeles, CA 90024-3671 ** 213/575-7421

ACTION State Office, Federal Building, 300 Ala Moana Boulevard, Room 6326, P.O. Box 50024, Honolulu, HI 96850-0001 ** 808/541-2832

ACTION State Office, 4600 Kietzke Lane, Suite E-141, Reno, NV 89502-5033 ** 702/784-5314

Region X

ACTION State Office, 304 N. 8th Street, Room 344, Boise, ID 83702-5835 ** 208/334-1707

ACTION State Office, Jackson Federal Office Building, 915 2nd Avenue, Suite 3190, Seattle, WA 98174-1103 ** 206/553-1558
ACTION State Office, Federal Building, 511 NW Broadway, Room 647, Portland, OR 97209-3416 ** 503/326-2261
ACTION TDD Phone No. 202/606-5256

Dated in Washington, DC on November 20, 1992.

G. Gary Kowalczyk,

Acting Director, ACTION.

[FR Doc. 92-28795 Filed 11-25-92; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 20, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2118.

Revision

- Farmers Home Administration.
7 CFR part 1944-D, Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations.
Recordkeeping; on occasion.
State or local governments; farms; non-profit institutions; 740 responses; 8,762 hours.

Jack Holston (202) 720-9736.

Extension

- Agricultural Marketing Service.
Grain Market News Reports and Molasses Market News.
LS-177.
Monthly; daily.

Business or other for-profit; 3480 responses; 449 hours.

John E. Van Dyke (202) 720-6231.

• Extension Service

Application for Authorization to Use the 4-H Club Name and/or Emblem.

On occasion.

Individuals or households, business or other for-profit, non-profit institutions, small business or organizations; 30 responses; 15 hours.

Dr. Alma C. Hobbs (202) 720-5853.

- Agricultural Stabilization and Conservation Service.

7 CFR 2.65, 1423.1, 1496.2 Report of Cargo Over, Short and/or

Damaged.

KC-269A (Reverse).

On Occasion.

Business or other for-profit; 9,000 responses; 2,250 hours.

Dean W. Peterson (816) 926-6451.

Larry Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92-28805 Filed 11-25-92; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Draft Supplement to the Supplement to the Final Environmental Impact Statement for the Rocky Mountain Regional Guide

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that a brief Draft Supplement to the Supplement to the Final Environmental Impact Statement for the Rocky Mountain Regional Guide is available for comment.

EFFECTIVE DATE: The comment period for the draft supplement runs from 90 days from the date of publication. Written comments are due no later than March 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Written comments should be sent to Dick Lindenmuth, Planning Team Leader, Rocky Mountain Regional Guide, P.O. Box 25127, Lakewood, CO 80225-0127. Comments submitted by FAX are not acceptable. Questions about this supplement may also be telephoned to Dick Lindenmuth at (303) 236-9656. Persons on the mailing list for the final Regional Guide will receive a copy of this draft supplement.

SUPPLEMENTARY INFORMATION: On July 6, 1992, the Regional Forester for the Forest Service Rocky Mountain Region published a Supplemental Final Environmental Impact Statement to describe the Silviculture standards and guidelines to be used by Supervisors of

the National Forests and Grasslands as they prepare revisions for their Land and Resource Management Plans. One standard published in this document describes the maximum size of artificially created openings. Members of the public pointed out that this standard lacks a statement of the overall maximum size artificially created openings can take under the exceptional conditions requiring Regional Forester approval. We wish to correct this omission.

Dated: November 17, 1992.

Tom L. Thompson,

Deputy Regional Forester.

[FR Doc. 92-28416 Filed 11-25-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Open Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held December 14, 1992, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology & Policy Analysis with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation and discussion regarding open architecture computer numerical controllers (CNCs).

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, BXA/EA/ODAS—room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482-2583.

Dated: November 20, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 92-28813 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with October anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, from interested parties as defined in §§ 353.2(k) and 355.2(i) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with October anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than October 31, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada: New Steel Rail, Except Light Rail A-122-804 Algoma Steel Inc.....	9/1/91-8/31/92
Italy: Pressure Sensitive Plastic Tape A-475-059 N.A.R., S.p.A.....	10/1/91-9/30/92
Japan: Tapered Roller Bearings, and Parts Thereof, Finished and Unfinished, Over 4 Inches A-588-604 Koyo Seiko Company, Ltd.... NSK Ltd..... NTN Corporation..... Nachi-Fujikoshi Corp.....	10/1/91-9/30/92
Tapered Roller Bearings, 4 Inches or Less in Outside Diameter and Certain Components Thereof A-588-054 Koyo Seiko Company, Ltd.... NSK Ltd..... Nachi-Fujikoshi Corp.....	10/1/91-9/30/92

Countervailing duty proceedings	Period to be reviewed
Argentina: Leather C-357-803.....	1/1/91-12/31/91
Brazil: Certain Agricultural Tillage Tools C-351-406.....	1/1/91-12/31/91
India: Certain Iron-Metal Castings C-533-063.....	1/1/91-12/31/91
Sweden: Certain Carbon Steel Products C-401-401.....	1/1/91-12/31/91

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: November 19, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-28812 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-602]

Industrial Phosphoric Acid From Belgium; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on industrial phosphoric acid from Belgium. Interested parties who object to this revocation must submit their comments in writing no later than thirty days from November 27, 1992.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1987, the Department of Commerce (the Department) published an antidumping duty order on industrial phosphoric acid from Belgium (52 FR 31439). The Department has not received a request to conduct an administrative review of this order for the most recent five consecutive annual anniversary months.

In accordance with 19 CFR 353.25(d)(4), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. On August 12, 1992, the Department published an "Opportunity to Request Administrative Review" for the period August 1, 1991 through July 31, 1992 (57 FR 36063). We received no request for review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke this order.

Opportunity to Object

No later than thirty days from November 27, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

Since no interested party requested an administrative review by August 31, 1992, in accordance with the Department's notice of opportunity to request administrative review, if no interested party objects to this intent to revoke within thirty days from

November 27, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: November 16, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-28819 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 20, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers nine manufacturers/exporters of this merchandise to the United States and the period April 1, 1990, through March 31, 1991.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 1992, the Department of Commerce (the Department) published in the *Federal Register* (57 FR 6097) the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226, April 12, 1973). The Department has now completed that administrative review with respect to Hitachi Metals Techno, Ltd., Izumi, Pulton Chain, Pulton Chain/HIC, Pulton Chain/I&OC, Sugiyama/Hokoku, Sugiyama/I&OC, Sugiyama/Harima Enterprises/San Fernando (Japan), and RK Excel (formerly Takasago), for the period April 1, 1990, through March 31, 1991, in accordance with section 751 of the Tariff

Act of 1930, as amended (the Tariff Act). Daido Kogyo/Daido Corp., and Enuma/Daido Corp., are being reviewed separately, and their final results will be published in a later notice.

Scope of the Review

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule (HTS) item numbers 7315.11.00 through 7616.90.00. HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Hitachi Metals Techno, Ltd., Izumi, Pulton Chain, Pulton Chain/HIC, Pulton Chain/I&OC, Sugiyama/Hokoku, Sugiyama/I&OC, Sugiyama/Harima Enterprises/San Fernando (Japan), and R.K. Excel (formerly Takasago), for the period April 1, 1990, through March 31, 1991.

We corrected the following clerical errors for these final results: Use of incorrect prices for two of Pulton's U.S. sales, double counting of one of Pulton's U.S. sales, and use of an incorrect quantity for one of Pulton's U.S. sales.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from all respondents and the petitioner, the American Chain Association (ACA).

Comment 1: Petitioner argues that Izumi's home market advertising costs should be treated as indirect expenses. Petitioner points out that Izumi's

questionnaire response states that these advertising costs were indirect selling expenses, yet the Department treated them as direct expenses in the preliminary results.

Department's Position: We agree with petitioner and have treated Izumi's advertising costs as indirect expenses in these final results.

Comment 2: Petitioner asserts that packing costs incurred on Izumi's U.S. sales were not taken into account in the Department's preliminary calculations, and requests that this be corrected.

Department's Position: We agree with petitioner and, where FMV is based on home market sales, we have taken Izumi's U.S. packing costs into account in these final results. Since we adjusted for U.S. packing in our preliminary constructed value (CV) calculations, we have made no additional changes for packing in our final CV calculations.

Comment 3: Petitioner argues that the Department failed to include Izumi's U.S. brokerage and handling costs in the preliminary results, and asks that this be corrected.

Department's Position: We agree with petitioner and have included Izumi's U.S. brokerage and handling costs in our final calculations.

Comment 4: Petitioner claims that the Department was unable to find contemporaneous matches or CVs for some of Izumi's sales, and argues that such sales should be assigned a margin based on the best information available (BIA). Izumi claims that the unmatched sales are of a model that falls outside the scope of the finding and argues that the Department was correct in not including these sales in the preliminary calculations.

Department's Position: We disagree with petitioner. The unmatched sales were of a model that is not covered by the scope of the finding.

Accordingly, we have deleted these transactions from our final calculations.

Comment 5: Petitioner claims that the commissions incurred on RK Excel's (Excel) U.S. sales (all purchase price sales) were not correctly accounted for in the preliminary results. Petitioner submits that this error should be corrected by adding U.S. commissions to foreign market value (FMV). Excel argues that simply adding U.S. commissions to FMV effectively double counts these commissions because they have not been included in the reported U.S. prices. Excel argues that U.S. commissions should be added to both U.S. price and FMV, and then the lesser of home market indirect expenses or U.S. commissions should be deducted from FMV, as the Department did in the

final results for the April 1, 1989, through March 31, 1990, administrative review.

Department's Position: We agree with Excel that the proper methodology is that which was followed in the 1989-1990 administrative review, as directed by Department regulation 19 CFR 353.56(b). We have adjusted our final calculations accordingly.

Comment 6: Petitioner argues that Excel's technical service costs should be treated as indirect selling expenses because the questionnaire response does not clearly indicate whether all of the expenses were incurred during the period of review and whether the expenses were incurred exclusively on roller chain transactions. Petitioner further argues that certain fixed costs included in Excel's technical services claim should be treated as indirect selling expenses. Excel submits that its allocation methodology (dividing technical service expenses incurred during the period by total sales during the period) is reasonable and identical to that used in the 1989-1990 review. Excel also claims that all of the technical service costs were directly related to sales.

Department's Position: We agree in part with Excel. We are satisfied that the methodology used by Excel to allocate technical service expenses is reasonable, and we continued to treat the travel portion of Excel's technical service costs as a direct selling expense in our final calculations. We agree with petitioner, however, that the fixed costs associated with technical services (salaries, benefits, and automobile depreciation) should be treated as indirect selling expenses, and we have adjusted our calculations accordingly.

Comment 7: Petitioner claims Hitachi's calculation of inventory carrying costs is potentially flawed. Petitioner submits that to the extent that Hitachi financed its shipments out of retained earnings, the true cost of this expense may be understated. Additionally, petitioner questions whether the reported charges cover "time on water" (the time period between the date of acquisition in Japan and the date of receipt at Hitachi Maxco's U.S. warehouse). Hitachi asserts that its reported indirect selling expenses include all actual interest charges incurred for inventory carrying costs. Hitachi further argues that the cost for "time on water" is included in its calculation of inventory carrying cost.

Department's Position: We disagree with petitioner. We have no evidence on which to conclude that Hitachi has inaccurately calculated or reported its inventory carrying costs; and petitioner

has provided no factual support for its claim to the contrary. We are satisfied that Hitachi has included "time on water" in calculating its cost of carrying inventory, and we have made no changes to our calculations in these final results.

Comment 8: Petitioner argues that I&OC refused to answer the Department's questionnaire and, as a result, should receive an adverse BIA margin. I&OC submits that petitioner's argument is irrelevant because the Department calculated margins using Sugiyama's prices to I&OC rather than I&OC's prices to its customers.

Department's Position: We disagree with petitioner. We initiated an administrative review of roller chain manufactured by Sugiyama and Pulton and sold through I&OC. We did not initiate a separate administrative review of I&OC. All information required to complete this review was provided by Sugiyama and Pulton. As a result, it is inappropriate to assign a margin to I&OC.

Comment 9: Petitioner asserts that the Department improperly deducted U.S. packing costs from Pulton's third-country prices. Pulton argues that petitioner is mistaken due to the fact that the computer variable name for U.S. packing on the U.S. sales tape is the same variable name used for ocean freight in the third-country sales tape.

Department's Position: We disagree with petitioner. As indicated in Pulton's questionnaire response, the variable represents U.S. packing on the U.S. sales tape, and ocean freight on the third-country sales tape. Consequently, we appropriately adjusted for these expenses in our preliminary calculations.

Comment 10: Excel argues that its preliminary margin is based on incorrect model-match information. Excel submitted clarifications concerning its model-match instructions on February 28, 1992, after publication of the preliminary results. Petitioner argues that Excel's February 28th submission is an untimely submission of new information and should be rejected.

Department's Position: We agree with Excel. Excel's February 28th submission simply clarifies information that is already on the record and does not constitute an untimely submission of new information. Thus, we have included the model-match clarifications in our final calculations.

Comment 11: Sugiyama claims the Department should have based FMV on Sugiyama's prices to "company E" and "company H", rather than on those companies' prices to their customers. Sugiyama asserts that "company E" is

not related to Sugiyama and that the Department should, therefore, base FMV on Sugiyama's prices to "company E". Sugiyama further argues that its prices to "company H", a related party, may be used as the basis for FMV because the Tariff Act of 1930 (the Tariff Act) (19 U.S.C. 1667b(a)(3)) and Department regulations (19 CFR 353.45(a)) permit the use of prices between related parties where such prices are comparable to the prices at which the producer sells such merchandise to an unrelated party (19 CFR 353.45(a)).

Department's Position: We disagree with Sugiyama. On July 19, 1991, we informed Sugiyama that we considered Sugiyama and "company E" to be related to each other within the meaning of the Tariff Act. We outlined the basis for our decision in a July 16, 1991, memorandum. That memorandum noted that two Sugiyama officials were members of "company E's" board of directors. Moreover, one official of "company E" had indicated that Sugiyama provided 60 percent of the capital used to establish "company E", a fact that was corroborated when the Department received additional information from several reliable, independent sources.

We normally do not use transactions between related parties in the calculation of FMV. We use related-party sales only if we are satisfied that such sales are "comparable" to sales to unrelated parties. The burden of proof rests upon the respondent to demonstrate that prices to related parties are indeed comparable to prices to unrelated parties. Since both "company E" and "company H" failed to meet this burden of proof, we did not use these sales in our calculation of FMV.

Comment 12: Sugiyama argues that even if the Department is correct in using prices from companies "E" and "H" to their customers as the basis for FMV, then the Department must grant a level-of-trade adjustment when making comparisons to purchase price sales because such sales, all made to I&OC, occur at a different level of trade than do home market sales from companies "E" and "H" to their customers.

Petitioner asserts that no level-of-trade adjustment is warranted because companies "E" and "H" are both related to Sugiyama and all three companies must consequently be treated as a single enterprise. Petitioner also argues that the first unrelated customers in the Japanese market and I&OC are all roller chain distributors and, therefore, are at the same level of trade. Additionally, petitioner claims that I&OC and

Sugiyama failed to provide any evidence that prices and/or costs differ by level of trade in the Japanese market. Petitioner notes that in attempting to persuade the Department to grant a level-of-trade adjustment, Sugiyama and I&OC compared sales from Sugiyama to I&OC, the U.S. purchase price customer, with home market sales to distributors. Petitioner argues that the Department has consistently rejected such inter-market comparisons as a justification for a level-of-trade adjustment because it is impossible to determine which differences result from selling at different levels of trade and which result from selling in different markets.

Department's Position: We disagree with Sugiyama. Sugiyama's questionnaire response, and its response to our supplemental questionnaire responding to our request for additional information regarding Sugiyama's claimed level-of-trade adjustment, fail to demonstrate that I&OC's customers are at a different level of trade than those of companies "E" and "H". Sugiyama characterizes I&OC and companies "E" and "H" as distributors, referring to I&OC as "first distributor" and companies "E" and/or "H" as "second distributor". Other than Sugiyama's unsupported claim that the customers of companies "E" and "H" and the customers of I&OC are at different levels of trade, we have received no information to support a conclusion that different trade levels exist in this situation.

In addition, even if different levels of trade did exist, Sugiyama failed to adequately quantify its claimed adjustment. Sugiyama claimed a level-of-trade adjustment for the selling expenses of companies "E" and "H". For each company Sugiyama provided a ratio of that company's selling expenses to that company's total sales. For company "H" no information has been provided to support the ratio other than the total sales figure and the total selling expenses figure. For company "E" no supporting information has been provided. Certain information alleged to support a level-of-trade adjustment was submitted for the first time in the case brief prior to the hearing, and thus was disregarded as untimely. Because Sugiyama failed to demonstrate that differences in levels of trade existed, and because Sugiyama failed to quantify its level-of-trade claim, we have made no level-of-trade adjustment for these final results.

Comment 13: Sugiyama claims that purchase price sales (all made to I&OC) should only be compared to home market sales made by Hokoku (a related

trading company) as a last resort. Sugiyama argues that the Department should use its sales to companies "E" and "H" as the basis for FMV, rather than sales from those companies to their customers (see Comment 11). Sugiyama asserts that sales to companies "E" and "H" are equivalent to sales to I&OC. Sugiyama argues that Hokoku's home market sales are inappropriate for purchase price companies because Hokoku's sales are from a "first distributor" to a "second distributor", while sales to I&OC are from the factory to a "first distributor".

Sugiyama also argues that Hokoku's home market sales should not be matched to sales to I&OC because of brand differentiation. Hokoku sells only "HKK" brand roller chain, while I&OC does not sell "HKK" brand chain.

Petitioner asserts that there is no basis for disregarding Hokoku sales in our calculation of FMV. Petitioner notes that the chain sold by Hokoku is physically identical to that sold to I&OC. Petitioner also notes that there is no evidence indicating that "HKK" brand customers receive any additional services which are unavailable to non-"HKK" brand customers.

Department's Position: We disagree with Sugiyama. First, as noted in our response to Comment 11, we do not consider Sugiyama's sales to companies "E" and "H" as appropriate bases for FMV. Second, we do not consider that brand differentiation, in and of itself, justifies our not using Hokoku's sales in deriving FMVs for purchase price comparisons. We agree with petitioner that the chain in question is identical in physical characteristics, and that there is no evidence indicating that additional services were extended to purchasers of "HKK" chain.

Comment 14: Pulton argues that the Department failed to deduct inland freight and credit from CV in the preliminary results.

Department's Position: We agree with Pulton and have deducted inland freight and credit from the CVs for these final results.

Comment 15: Pulton, Sugiyama, and Izumi argue that because they did not receive printouts of every transaction margin, they were hampered in their ability to analyze the accuracy of the Department's margin calculations. These companies argue that without a complete set of printouts, there is no way to determine whether the Department's calculations are accurate.

Department's Position: We disagree with these respondents' claim that they received inadequate disclosure of our preliminary results. Each firm received

the complete computer program used to calculate the preliminary results for that firm. These programs contain every calculation used to produce our preliminary results.

The printing of all U.S. transactions would constitute a redundant and wasteful use of our computer resources. Therefore, we printed sample pages of the transactions used in deriving our preliminary results. These printouts, together with the computer programs and analysis memoranda, provide respondents the opportunity to examine the complete results of our calculations and to comment meaningfully upon our methodology. Finally, we note that we used the data submitted by Pulton, Sugiyama, and Izumi in reaching the preliminary results. Had they so desired, each of these firms could have replicated our calculations.

Final Results of the Review

As a result of our analysis of the comments received, we determine that the following weighted-average margins exist:

Manufacturer/ exporter	Review period	Margin (per- cent)
Hitachi Metals Techno, Ltd.....	4/1/90-3/31/91	12.68
Izumi.....	4/1/90-3/31/91	17
Pulton Chain.....	4/1/90-3/31/91	.00
Pulton Chain/HIC.....	4/1/90-3/31/91	15.92
Pulton Chain/I&OC.....	4/1/90-3/31/91	11
Sugiyama/Hokoku.....	4/1/90-3/31/91	.38
Sugiyama/I&OC.....	4/1/90-3/31/91	5.83
Sugiyama/Harima Enterprises/San Fernando (Japan)...	4/1/90-3/31/91	(¹)
RK Excel (Takasago).....	4/1/90-3/31/91	3.08

¹ No shipments during the period; rate is from the last period in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions for all companies directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated

companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 12.68%. This rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on best information available (BIA).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(8).

Dated: November 19, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-28822 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-808]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan; Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of changed circumstances antidumping duty administrative review.

SUMMARY: On September 22, 1992, in accordance with section 751(b) of the Tariff Act of 1930, as amended, the Department of Commerce (the Department) initiated a changed circumstances review of the antidumping duty order on sweaters

wholly or in chief weight of man-made fiber (MMF sweaters) from Taiwan pursuant to information received from a unit within the Department's International Trade Administration and from the U.S. Customs Service, which indicated that Jia Farn Manufacturing Company, Ltd. (Jia Farn) may have been reselling MMF sweaters produced by other companies. The changed circumstances review covers the period April 27, 1990 through August 31, 1992. Based upon the information received in this proceeding, we preliminarily determine that Jia Farn was not the manufacturer of the merchandise in question, and entries of MMF sweaters purported to have been manufactured by Jia Farn are, therefore, subject to the antidumping duty order on MMF sweaters from Taiwan. As a result of this finding, we are instructing the U.S. Customs Service to suspend liquidation of entries of merchandise purportedly manufactured by Jia Farn at the "all others" rate from the original investigation.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: David Mason Jr. or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-2923.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 1990, the Department of Commerce (the Department) published in the *Federal Register* (55 FR 39033) an antidumping duty order on sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Taiwan (see also, 55 FR 39775). Jia Farn Manufacturing Company, Ltd. (Jia Farn) was specifically excluded from the antidumping duty order based upon the Department's determination in the less than fair value investigation (LTFV investigation) that the Jia Farn was a manufacturer that was not selling the subject merchandise in the United States at less than fair value during the period of investigation, April 1, 1989 through September 30, 1989.

On September 22, 1992, pursuant to information received from a unit within the Department's International Trade Administration (see September 2, 1992 "Summary of Information" Memorandum from Deputy Inspector General Michael Zimmerman to Assistant Secretary Alan Dunn) and from the U.S. Customs Service, the Department published in the *Federal Register* (57 FR 43705) a notice of initiation of changed circumstances

review of the antidumping duty order on MMF sweaters from Taiwan. On September 24 and September 28, 1992, Jia Farn submitted its response to the Department's questionnaire. In addition, on October 2, October 6, and October 8, 1992, Jia Farn submitted additional clarifying information to the Department for consideration in this changed circumstances review. The Department conducted an on-site verification of Jia Farn's response from October 5, 1992 through October 15, 1992, and supplemented its findings with information received from interviews with officials from numerous companies associated with Jia Farn through contractual arrangements.

Scope of the Review

The products covered by this review include sweaters wholly or in chief weight of man-made fiber. For purposes of this review, sweaters of man-made fiber are defined as garments for outerwear that are knit or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys' or girls' sweaters as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it includes only those with a knit-on-rib at the bottom.

Garments which extend below mid-thigh or cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not considered sweaters and are excluded from the scope of this review. Also specifically excluded from the scope of this review are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Taiwan and entering under Harmonized Tariff Schedule (HTS) item number 9902.61.

The subject merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60,

6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Preliminary Results of Review

Based upon information provided in Jia Farn's September 24, 1992 response to the Department, as supplemented, and Jia Farn's March 6, 1992 letter to the U.S. Customs Service; information gathered during the Department's verification in this changed circumstances review; information contained in the verification report from the LTFV investigation; and best information otherwise available, we preliminarily determine that for Jia Farn's sales of MMF sweaters to the United States during the period April 27, 1990 through August 31, 1992, Jia Farn did not act as a manufacturer of MMF sweaters. Accordingly, we preliminarily determine that the merchandise subject to this changed circumstances review is subject to the antidumping duty order on MMF sweaters from Taiwan.

During the LTFV investigation, Jia Farn demonstrated to the Department that it performed knitting operations and finishing operations, and either produced its own yarn for MMF sweaters by performing the yarn spinning function in-house, or purchased the yarn for use by subcontractors (see the June 25, 1990 "Verification of Constructed Value Jia Farn Manufacturing Co., Ltd." from the LTFV investigation, at 3-5). In addition, Jia Farn claimed that "[b]efore the investigation, during the period of investigation and subsequent to the investigation, Jia Farn has continued with the same method of operation in its manufacture of man-made sweaters for the U.S. market. Jia Farn has continued to be the manufacturer for every single sweater it has exported to the U.S. market after the publication of the antidumping duty order." (See March 6, 1992 letter from Ablondi & Foster, counsel for Jia Farn, to the U.S. Customs Service at 4.)

By contrast, we found at the on-site verification in the changed circumstances review that Jia Farn performed no spinning operations and no knitting operations, and had significantly reduced its in-house finishing operations in the changed circumstances review period (see the June 25, 1990 "Verification Report of Constructed Value Jia Farn Manufacturing Co., Ltd." from the LTFV

investigation, at 5; see also the November 18, 1992 Verification Report on Jia Farn at 16-20; and the "Report on Manufacturing Operations" section of the November 18, 1992 Verification Report on Jia Farn at 1).

We specifically attempted to evaluate Jia Farn's activities during the changed circumstances period of review in the following areas:

(1) The number of Jia Farn's full-time employees, and the number and ownership of knitting machines;

(2) Jia Farn's role in the yarn spinning operation;

(3) Jia Farn's role in the purchase and dyeing of yarn for MMF sweater production; and

(4) Jia Farn's role in the control and direction of the production process through the use of subcontractors. The cumulative evidence indicates that Jia Farn cannot be considered a manufacturer of MMF sweaters during the period of this changed circumstances review.

With respect to the first issue, the Department's verification in the changed circumstances review indicated that Jia Farn did not have evidence to support its claimed number of full-time employees. Instead, the Department's findings in the verification show that Jia Farn, in its changed circumstances review questionnaire response, overstated the number of full-time employees of the company by more than 300 percent (see the "Report on Manufacturing Operations" section of the November 18, 1992 Verification Report on Jia Farn at 9; see also Jia Farn's September 24, 1992 response at 4). Further, concerning the number and ownership of knitting machines, information gathered by the Department at the verification indicated that Jia Farn no longer owns knitting machines and did not own any knitting machines during the period of this changed circumstances review (see the November 18, 1992 Verification Report on Jia Farn at 14-15). Based upon the language in the contractual agreements between Jia Farn and certain secondary subcontractors (i.e., subcontractors that produced MMF sweaters for a master subcontractor), we have determined that the ownership of the knitting machines in question was effectively transferred to the secondary subcontractors as part of the contractual agreement (see the November 18, 1992 Verification Report on Jia Farn at 14-15, Exhibits 22 and 23, and Attachment 19).

On the issue of Jia Farn's role in the spinning operation, Jia Farn's September 24, 1992 response incorrectly indicated that Jia Farn performed yarn spinning

operations during the changed circumstances review period (see September 24, 1992 response, as supplemented, at Attachment 5). Based upon information received at the verification, and contrary to the response, Jia Farn did not perform spinning operations at its facility (see the "Report on Manufacturing Operations" section of the November 18, 1992 Verification Report on Jia Farn at 1).

In the matter of yarn acquisition, Jia Farn was unable to provide sufficient evidence to substantiate that it paid yarn suppliers for yarn used by subcontractors during the period of the changed circumstances review (see the "Report on Manufacturing Operations" section of the November 18, 1992 Verification Report of Jia Farn at 5-7). Privileged information also supports the conclusion that Jia Farn could not substantiate its purchase of yarn. With respect to the yarn dyeing function, contrary to Jia Farn's response, Jia Farn did not perform this operation in-house at any time during the changed circumstances period of review (see September 24, 1992 response, as supplemented, at Attachment 5; see also the November 18, 1992 Verification Report on Jia Farn at 15-16).

As for the issue of Jia Farn's control and direction of the production process, during the changed circumstances review verification, the Department found that several master subcontractors were used to produce the MMF sweaters in question. These master subcontractors supervised and directed secondary subcontractors in the production of the merchandise, thereby further diminishing the role of Jia Farn as an entity that directed and controlled production. In addition, from the information received, it appears that Jia Farn had no direct contact with the secondary subcontractors who produced the merchandise during the period of the changed circumstances review. Thus, even assuming direction and control is sufficient to confer "manufacturer" status, in each transaction where a master subcontractor was used, the actual producer of the MMF sweaters in question was not Jia Farn.

In contrast to Jia Farn's March 6, 1992 letter to the U.S. Customs Service, wherein Jia Farn claimed it set the price for sales of MMF sweaters, we note that Jia Farn's role in setting the price of the merchandise is questionable. Specifically, Jia Farn was unable to provide written documentation which would substantiate that the selling price of the merchandise was negotiated by Jia Farn. In general, the price agreed

upon by the U.S. customer and the trading company became Jia Farn's price for the merchandise. Thus, the trading company, in most instances, appeared to set the price of the merchandise in question.

In addition, during the verification, the Department uncovered substantial inconsistencies and deficiencies in Jia Farn's financial system which were not resolved by the company during the verification (see October 15, 1992 Memorandum from Ed Yang to David Foster; see also the "Report on Manufacturing Operations" section of the November 18, 1992 Verification Report on Jia Farn generally). Most notably, Jia Farn could not produce the check registers for the years 1990 and 1991 (see the "Report on Manufacturing Operations" section of the November 18, 1992 Verification Report at 5). Secondly, a substantial portion of Jia Farn's business transactions could not be substantiated because the company could not provide an accounting for disbursements that would evidence payment to the yarn suppliers for the yarn used to produce MMF sweaters. Thirdly, attempts to trace specific transactions through Jia Farn's accounting system during the verification indicated that critical support documentation had been discarded. Finally, the company official in charge of Jia Farn's accounting records indicated that not all transactions may have been recorded in the company's books and records (see the "Report on Manufacturing Operations" section of the November 18, 1992 Verification Report on Jia Farn at 4). These pervasive inconsistencies in the company's financial system call into question the credibility of much of the documentation proffered by Jia Farn at verification to substantiate its response.

In sum, the Department finds that (1) for some transactions, based upon evidence obtained at verification, Jia Farn was not the manufacturer of the merchandise in question during the period of the changed circumstances review, and (2) for all other transactions, the Department is compelled to conclude that, as the best information otherwise available, Jia Farn was not the manufacturer of the merchandise during the period of the changed circumstances review. Privileged information provided to the Department supports these conclusions.

The purpose of this changed circumstances review was to determine whether Jia Farn had operated as a manufacturer of the merchandise in question during the period of the changed circumstances review. Jia Farn

was excluded from the antidumping duty order on MMF sweaters from Taiwan on the basis that it was a manufacturer of MMF sweaters. Because we preliminarily determine that Jia Farn was not a manufacturer during the period of this changed circumstances review, we preliminarily determine that the merchandise subject to this changed circumstance review is subject to the antidumping duty order on MMF sweaters from Taiwan at the "all others" rate. Entries made subsequent to the period of this changed circumstances review, that is, entries made on or after September 1, 1992, will be considered entries not manufactured by Jia Farn, and thus subject to the antidumping duty order, unless and until Jia Farn demonstrates, by substantial evidence on the record of an administrative review covering those specific entries, that it is the manufacturer of the merchandise.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Tariff Act of 1930, as amended, we are directing the U.S. Customs Service to suspend liquidation of all entries of MMF sweaters, as defined in the "Scope of the Review" section of this notice, sold by Jia Farn or purported to be manufactured by Jia Farn, that are entered, or withdrawn from warehouse for consumption, on or after April 27, 1990. The U.S. Customs Service shall require a cash deposit at the "all others" rate from the LTFV investigation, for entries pertaining to Jia Farn.

Public Comment

Interested parties may request disclosure within 5 days of the date of publication of this determination, and may request a hearing within 7 days of publication. Case briefs and/or written comments from interested parties may be submitted not later than December 21, 1992. Rebuttal briefs and rebuttals to comments, limited to the issues raised in those briefs or comments, may be filed not later than December 30, 1992. Any hearing, if requested, will be held on January 6, 1992. The Department will publish the final results of review, including its analysis of any written comments.

These preliminary results are in accordance with 19 CFR 353.22(f)(1) (iv) and (v).

Dated: November 19, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-28821 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-020]

Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers two manufacturers/exporters of this merchandise to the United States and the period November 1, 1990 through October 31, 1991. In these preliminary results, no dumping margins have been found for either manufacturer/exporter during the period.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION.

Background

On November 7, 1991, the Department published in the *Federal Register* a notice of "Opportunity to Request Administrative Review" (56 FR 56982) of the antidumping duty order on titanium sponge from Japan for the period November 1, 1990 through October 31, 1991. On November 15, 1991, one manufacturer/exporter, Toho Titanium Co. Ltd. (Toho), requested an administrative review. On November 26, 1991, the petitioner, RMI Titanium Company, requested an administrative review of Showa Denko K.K. (Showa) and Toho for the period November 1, 1990 through October 31, 1991. On November 27, 1991, Showa requested an administrative review. We initiated the review on December 23, 1991 (56 FR 66429). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to

produce titanium ingots, slabs, billets, plates, and sheets. During the review period, such merchandise was classified under subheading 8108.10.50.10 of the Harmonized Tariff Schedule (HTS). The HTS number is provided for convenience and customs purpose. The written description remains dispositive.

The review covers two manufacturers/exporters to the United States of the subject merchandise, Toho and Showa, for the period November 1, 1990 through October 31, 1991.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772(b) of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Tariff Act. In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For the latter sales, the Department determined that purchase price was the appropriate determinant of United States price because the merchandise was shipped directly from the manufacturer to the unrelated buyers, without being introduced into the inventory of the related selling agent. Moreover, direct shipment from the manufacturers to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved. Finally, the related selling agent located in the United States acted only as a processor of sales-related documentation and as a communication link with the unrelated U.S. buyers.

Purchase price sales were based on the delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign and U.S. brokerage, foreign inland freight and insurance, ocean freight and insurance, U.S. freight and insurance, Japanese consumption tax and U.S. Customs duties as reported.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Act, when sufficient quantities of merchandise were sold in the home market, at or above the cost of production, to provide a basis for comparison. Home market price was based on the packed, exfactory or delivered price to unrelated purchasers in the home market. We adjusted

Showa's price for post-sale price adjustments. We made a deduction, where applicable, for inland freight, and a circumstance of sale adjustment for differences in commissions, credit and the Japanese consumption tax between the U.S. and Japanese markets. An adjustment was also made for packing cost differences.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the dumping margins to be:

Manufacturer/Exporter	Time period	Margin (percent)
Showa	11/1/90-10/31/91	Zero (0).
Denko K.K.		
Toho	11/1/90-10/31/91	Zero (0).
Titanium Co.		

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Services.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of

this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 19, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-28811 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-701]

Certain Steel Wire Nails From New Zealand; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its

determination not to revoke the countervailing duty order on certain steel wire nails from New Zealand.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Gayle Longest, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-0983 or 482-4149.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1992, the Department of Commerce ("the Department") published in the *Federal Register* (57 FR 44735) its intent to revoke the countervailing duty order on certain steel wire nails from New Zealand (52 FR 37196; October 5, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for four consecutive anniversary months.

On October 22, 1992, Keystone Steel & Wire Company, a domestic producer of the subject merchandise and a petitioner in this proceeding, objected to our intent to revoke the order and, on October 28, 1992, we received objections to the proposed revocation from Insteel Industries, Inc., and Atlas Steel & Wire Corporation, U.S. producers of steel wire nails and petitioners in the investigation. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: November 18, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-28820 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Meeting; Florida Keys National Marine Sanctuary Advisory Council

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council; notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: December 14 and 15, 1992 from 9 a.m. until adjournment. The location for the December 14 meeting will be at the Cheeca Lodge, Mile Marker 82, Route 1, Islamorada, Florida. The location for the December 15 meeting will be at the Holiday Inn Beachside, North Roosevelt Avenue, Key West, Florida.

Agenda

1. Discussion of zoning alternatives.

PUBLIC PARTICIPATION: The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743-2437 or Ben Haskell at (202) 606-4016.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: November 19, 1992.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-28718 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-08-M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) will hold meetings on December 8, 1992, of its Demersal Species Committee from 12:30 p.m. until 2:30 p.m. and of its Squid/Mackerel/Butterfish Committee from 2:30 p.m. until 4 p.m. The meetings will be held at the New York Vista Hotel, 3 World Trade Center, New York, NY; (telephone: 212-938-9100).

The Council will begin its regular session on December 9 at 9:45 a.m. and should adjourn at approximately 12 noon on December 10.

In addition to hearing committee reports, the Council may adopt the Scoping Document for Amendment #5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan; hear a staff presentation on the Summer

Flounder Mesh Selectivity Study; have a discussion with Dr. William W. Fox, Jr., Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, on the afternoon of December 9, and consider other fishery management matters as deemed necessary. The meeting may be lengthened or shortened based on the progress of the agenda. The Council may go into closed session (not open to the public) to discuss personnel and/or national security matters.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: November 20, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-28740 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council (Council) will hold a public meeting on December 2-3, 1992, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA; telephone: 508-774-6800. The Council will begin its meeting at 10:00 a.m. on December 2. The meeting will reconvene on December 3 at 9:00 a.m.

The first day of the meeting will begin with a Monkfish Committee report on the progress of a draft scoping document and the reorganization of the Advisory Committee. An Enforcement Committee report will follow in which members will discuss their review of the proposed amendments to the Groundfish and Scallop Plans. The National Marine Fisheries Service (NMFS) will hold a public hearing on the temporary adjustment of standards for Atlantic sea scallops. In the afternoon, Dr. William W. Fox, Jr., Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, will discuss fishery management policy with Council members.

On the second day of the meeting, the Groundfish Committee will conduct a final review of the Amendment No. 5 public hearing document and the Large Pelagics Committee chairman will report on the recent ICCAT meeting held in Madrid, Spain. This will be followed by reports from the Council Chairman and

the Executive Director, the NMFS Regional Director, Northeast Fisheries Science Center liaison, Mid-Atlantic Council liaison, and representatives from the Department of State, the Coast Guard, the Fish and Wildlife Service and the Atlantic States Marine Fisheries Commission.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: November 20, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-28741 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

[Docket No. 921111-2311]

Extension of Existing Interim Orders Granting Protection Under the Semiconductor Chip Protection Act of 1984 for Nationals, Domiciliaries and Sovereign Authorities of Certain Countries to Which Interim Protection Has Been Extended

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Pursuant to section 914 of the Semiconductor Chip Protection Act of 1984 (SCPA), 17 U.S.C. 914, and guidelines issued by the Patent and Trademark Office, 49 FR 44517 (Nov. 7, 1984), the Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks has determined that existing interim orders should be extended in duration for nationals, domiciliaries and sovereign authorities of Japan, Sweden, Australia, the Member States of the European Community, Canada, Switzerland, Finland, and Austria under section 914 of the SCPA.

EFFECTIVE DATE: This order is effective on November 5, 1992.

TERMINATION DATE: This order will terminate on July 1, 1994.

ADDRESSES: Address correspondence to Assistant Commissioner for External Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231, phone (703) 305-9300.

SUPPLEMENTARY INFORMATION: When Congress enacted the Semiconductor Chip Protection Act of 1984 (SCPA) it established an entirely new category of intellectual property that did not fall under the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention or the Berne Convention of the Protection of Literary and Artistic Works. The Congress created a balanced intellectual property regime for the protection of layout-designs of semiconductor chips that provided a level of protection that was satisfactory to meet the needs of the U.S. public and the domestic semiconductor chip industry. At the same time, Congress was also aware of the need of U.S. chip producers for protection in foreign markets, of the need of foreign chip producers for protection here in the United States and that there was no international treaty for the protection of chips. Faced with this dilemma, Congress created an innovative mechanism to encourage the rapid building of a worldwide consensus on an appropriate regime of intellectual property protection for chip layout-designs that would be compatible with U.S. law and would encourage the development of the international market for semiconductor chip products. To achieve these goals, Congress established a two-tiered system for protecting foreign works in the United States. Section 914 of the SCPA permits the Secretary of Commerce to extend interim access to protection under the SCPA for foreign chip creators if certain criteria are met, and section 902 permits the President to proclaim indefinite access to protection under the SCPA for foreign creators from countries that protect U.S. works. This system has laid the groundwork for establishing a technology-specific, carefully-tailored and balanced regime of mask work protection in other chip-producing countries.

Section 902 of the SCPA sets out the criteria under which foreign works are eligible for protection in the United States. Section 902(a)(1) provides that:

Subject to the provisions of subsection (b), a mask work fixed in a semiconductor chip product, by or under the authority of the owner if the mask work, is eligible for protection under this chapter if—

(A) on the date on which the mask work is registered under section 908, or is first commercially exploited anywhere in the world, whichever occurs first, the owner of the mask work is (i) a national or domiciliary of the United States, (ii) a national, domiciliary or sovereign authority of a foreign nation that is a party to a treaty affording protection to mask works to which the United States is also a party, or (iii) a

stateless person wherever that person may be domiciled;

(b) the mask work is first commercially exploited in the United States; or

(C) the mask work comes within the scope of a Presidential proclamation issued under paragraph (2).

Section 902(a)(2) sets out the statutory criteria against which foreign laws are to be evaluated before issuing a Presidential proclamation. It provides that:

Whenever the President finds that a foreign nation extends, to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided in this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

In 1987 the Chairman of the then House Subcommittee on Courts, Civil Liberties and the Administration of Justice noted that the transition provisions in section 914 of the SCPA were "intended to encourage the rapid development of a new worldwide regime for the protection of semiconductor chips." 133 Cong. Rec. E1283 (daily ed. April 6, 1987). These transitional provisions empowered the Executive to use the issuance of interim protection orders under section 914 of the SCPA as a means to encourage other nations to move speedily to establish substantially similar systems of protection. These provisions originally were set to expire three years after the date of the enactment of the SCPA, November 7, 1987.

The Congress has twice extended the authority to issue interim orders in the belief that this process is promoting the protection of U.S. mask works abroad and that the speedy enactment of laws in other countries that are patterned after U.S. law is progress. H.R. Rep. 100-388, 100th Cong., 1st Sess. (1987). Under the SCPA, the Assistant Secretary and Commissioner of Patents and Trademarks has been delegated the tasks of determining when and under what conditions foreign mask works will be eligible for interim protection. To become eligible, a foreign government must demonstrate that it is making good faith efforts toward establishing a

regime of protection in its territory that is substantially similar to that which is provided in the United States under the SCPA.

The countries to which interim protection has been extended (the Member States of the European Community, Australia, Austria, Canada, Finland, Japan, Sweden, and Switzerland) cooperated with the United States to try to establish a treaty for the adequate and effective protection of mask works in the World Intellectual Property Organization (WIPO). A Diplomatic Conference for the negotiation of a Treaty on the Protection of the Layout-Designs of Integrated Circuits was held in Washington during the month of May 1989. The Treaty adopted at the conclusion of the Conference did not meet the needs of either Japan or the United States. No developed country has signed the Treaty, and it is yet to come into force.

Subsequent to the Diplomatic Conference, the United States has continued to work to conclude a multilateral agreement for the adequate and effective protection of semiconductor integrated circuit layout-designs. The December 20, 1991, text on the Trade Related Aspects of Intellectual Property (TRIPS) in the Uruguay Round of Trade negotiations in the General Agreement on Tariffs and Trade contains a section that will require such protection. It builds upon the substantive provisions of the WIPO Treaty and adds the missing features deemed necessary to provide an adequate level of protection. The countries to which interim protection has been extended all worked closely with the United States to achieve this goal. However, the TRIPS Agreement has not yet been concluded, and the presently issued interim orders will expire on December 31, 1992, before the TRIPS Agreement could possibly come into force.

The combination of the standards set out in section 902 and the process established to implement section 914 clearly appear to have satisfied the Congressional intent behind this unprecedented process. In 1984, only the United States had specific legislation in place for the protection of chips, while today such protection is in place in all of the countries to which interim protection has been extended. U.S. semiconductor chip layout-designs enjoy protection in all of those countries today. In some, the protection is enjoyed on the basis of national treatment and in some on the basis of reciprocity.

Since the interim orders were last extended, no complaints about the adequacy of the mask work protection

laws in any of the countries to which interim protection has been extended have been received. Should such complaints arise in the future, they can be taken into account in determining whether a particular interim order should be rescinded prior to its scheduled termination.

Because of this favorable environment, and in order to ensure the continuing protection of U.S. layout-designs in foreign markets, I have determined that extending the present interim orders will continue the incentive to work toward a successful conclusion of the TRIPS Agreement or another international agreement which will provide the basis for an adequate and effective multinational system for the protection for semiconductor mask works. In light of this, I am extending the interim orders for Japan, Sweden, Australia, the Member States of the European Community, Canada, Switzerland, Finland and Austria under section 914 of the SCPA. These orders will expire on July 1, 1994.

Dated: November 5, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92-28824 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-16-M

COMMISSION OF FINE ARTS

Cancellation of Meeting

The Commission of Fine Arts' meeting scheduled for Thursday, 3 December 1992 has been cancelled. The next Commission meeting is scheduled for Thursday, 21 January 1993 at 10 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 19 November 1992.

Charles H. Atherton,

Secretary.

[FR Doc. 92-28719 Filed 11-25-92; 8:45 am]

BILLING CODE 6330-01-M

COMMISSION ON LEGAL IMMIGRATION REFORM

Meeting

AGENCY: Commission on Legal Immigration Reform.

ACTION: Announcement of meeting.

SUMMARY: This notice announces the first formal meeting of the Commission. The Commission was established by the Immigration Act of 1990 under section 141. The meeting is being held to discuss the Commission's work program.

DATES: 10 a.m.-3 p.m., December 3, 1992.

ADDRESSES: Capitol Building, room EF100, Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Forbes Martin, Telephone: (202) 673-5348.

Dated: November 23, 1992.

Susan Forbes Martin,

Executive Director.

[FR Doc. 92-28779 Filed 11-25-92; 8:45 am]

BILLING CODE 6820-62-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Amendment of Export Visa Requirements for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 20, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year and amending visa requirements.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, between the Governments of the United States and India establishes limits for the period beginning on January 1, 1993 and extending through December 31, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1993 period and to amend the existing visa requirements for certain categories.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 44 FR 68504, published on November 29, 1979. Information regarding the 1993 **CORRELATION** will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 20, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	9,147,152 square meters.
219	44,757,081 square meters.
313	24,474,394 square meters.
314	5,594,635 square meters.
315	9,396,745 square meters.
335/635	445,200 dozen.
336/636	607,050 dozen.
340/640	1,496,250 dozen.
341	3,354,165 dozen of which not more than 2,012,499 dozen shall be in Category 341-Y ¹ .
342/642	858,600 dozen.
345	128,400 dozen.
347/348	393,432 dozen.
363	30,014,606 numbers.
369-D ²	932,800 kilograms.
369-S ³	508,800 kilograms.
369-O ⁴	9,752,000 kilograms.
641	1,049,612 dozen.
647/648	609,500 dozen.
Group II	
200, 201, 220-229, 237, 239, 300, 301, 317, 326, 330-333, 334/634, 338, 339, 349, 350, 351/651, 352, 359-362, 600-607, 611-633, 638, 639, 643-646, 649, 650, 652, 659, 665-O ⁵ , 666-670 and 831-859, as a group.	117,700,000 square meters equivalent.
Sublevels in Group II	
334/634	90,410 dozen.
351/651	163,835 dozen.

¹ Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

² Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

³ Category 369-S: only HTS number 6307.10.2005.

⁴ Category 369-O: all HTS numbers except 5702.10.9020, 5702.49.1010, 5702.99.1010 (rugs exempt from the bilateral agreement); 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369-D); and 6307.10.2005 (Category 369-S).

⁵ Category 665-O: all HTS numbers except 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000 (rugs exempt from the bilateral agreement).

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and India.

The conversion factors for merged Categories 334/634 and 351/651 are 34.5 and 43.5, respectively.

For visa purposes, you are directed, effective on January 1, 1993, to amend further the directive dated November 26, 1979, to include merged Categories 334/634 and 351/651 for goods produced or manufactured in India and exported from India on and after January 1, 1993.

Merchandise in Categories 334/634 and 351/651 may be accompanied by either the appropriate merged category visa or the

correct category visa corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-28768 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

November 20, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT:

Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement was reached in recent consultations between the Governments of the United States and Oman on a satisfactory solution on Categories 340/640, the United States Government has decided to control imports in these categories for the twelve-month period beginning on September 21, 1992 and extending through September 20, 1993 at a level of 104,553 dozen.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of Oman, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 46542, published on October 9, 1992.

Auggie D. Tantilto,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 20, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the **Agricultural Act of 1956**, as amended (7 U.S.C. 1854); and in accordance with the provisions of **Executive Order 11651** of March 3, 1972, as amended, you are directed to prohibit, effective on November 27, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Oman and exported during the twelve-month period beginning on September 21, 1992 and extending through September 20, 1993, in excess of 104,553 dozen ¹.

Textile products in Categories 340/640 which have been exported to the United States prior to September 21, 1992 shall not be subject to the limit established in this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantilto,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-28767 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DR-F

¹ The limit has not been adjusted to account for any imports exported after September 20, 1992.

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

November 20, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 20, 1992.

FOR FURTHER INFORMATION CONTACT:

Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6711. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 317 and 604-A are being increased for swing and carryforward. Also, the limit for Category 317 is being increased for carryforward previously applied but not used.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65243, published on December 16, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantilto,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 20, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports

of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on November 20, 1992, you are directed to amend the December 10, 1991 directive to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the United Mexican States:

Category	Twelve-month limit ¹
317.....	20,870,850 square meters.
604-A ²	2,294,056 kilograms.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1991.

² Category 604-A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantilto,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-28766 Filed 11-25-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meetings: 10 December 1992.

Time: 0800-1600.

Place: Pentagon.

Agenda: The Army Science Board (ASB) Ad Hoc Panel on "Technology for the Future Land Warrior" will meet to discuss advanced future technology. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and nonproprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92-28915 Filed 11-25-92; 8:45 am]

BILLING CODE 3710-08-M

Army Corps of Engineers**Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Caliente Stream Group Investigation, California**

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The action being taken is a feasibility investigation to identify and evaluate potential measures to provide flood protection to the communities of Lamont and Arvin in the Caliente Creek Stream Group area. The study area is located in Kern County southeast of Bakersfield, CA, and includes the drainage basin and flood plain areas of Caliente, Sycamore, Little Sycamore, Comanche, Tejon, and El Paso Creeks, including the Kern Lake Bed. Measures to be investigated include levee work, channel work, and a sump system.

FOR FURTHER INFORMATION CONTACT: Questions regarding this DEIS should be addressed to Ms. Patricia Roberson, Planning Division, Corps of Engineers, 1325 J Street, Sacramento, CA, 95814-2922, telephone (916) 557-6705.

SUPPLEMENTARY INFORMATION:**1. Proposed Action**

The Corps of Engineers, together with the non-Federal sponsor (Kern County Water Agency), is conducting a feasibility investigation to identify and assess alternative measures of flood protection for the Caliente Stream Group area. Since 1913, a total of 13 floods have occurred in the Caliente Creek flood plain. Floods in 1932, 1966, 1978, and 1983 were particularly severe. The 1984 flood caused damage in excess of \$25 million. The investigation will be conducted in two phases. The first phase will be development of alternative solutions to reduce flooding in the study area to determine whether a Federal interest exists in pursuing construction of a flood control project. This phase will require about 18 months. The second phase will be a detailed evaluation of flood control alternatives. The results of the investigation will be presented in a feasibility report submitted to Congress for authorization.

2. Alternatives

The feasibility report and DEIS will address a full range of alternatives. Alternatives developed for analysis during the first phase of the study are outlined below.

a. No Action. There will be no Federal participation in flood control in the study area.

b. Upstream Levee System. A levee, channel, and upstream sump system that will divert flood flows around Arvin and Lamont. These structures will be designed to control the entire flow from Caliente Creek, either at Arvin or Lamont.

c. Downstream Levee System. A levee, channel and downstream sump system that will divert flood flows around Arvin and Lamont. These structures will be designed to control the entire flow from Caliente Creek.

d. Upstream Levee System with Dike. A levee, channel, and upstream sump system that will divert flood flows around Arvin and Lamont. This alternative includes a reinforced dike at the mouth of Caliente Creek. This dike would allow the downstream structures to be designed for a specified flow split at the mouth of Caliente Creek. Reinforcing the dike at the mouth of Caliente Creek will allow the levees to be downsized.

e. Downstream Levee System with Dike. A levee, channel, and downstream sump system that will divert flood flows around Arvin and Lamont. This alternative includes a reinforced dike at the mouth of Caliente Creek. This dike would allow the downstream structures to be designed for a specified flow split at the mouth of Caliente Creek. Reinforcing the dike at the mouth of Caliente Creek will allow the levees to be downsized.

3. Scoping Process

a. A notice of initiation for the Caliente Stream Group Investigation will be sent to public agencies, organizations, and individuals in November 1992. The notice of initiation provides an opportunity for the public to identify the significant flood control problems and natural resources in the area. A public meeting will be held on December 10, 1992, in Bakersfield, CA, to discuss the study and to solicit public views and concerns about the flood control alternatives.

b. Coordination will be maintained with Federal, State, and local agencies, and concerned groups and individuals through meetings and review of draft documents. Through this notice of intent, all affected publics and agencies are invited to participate in the feasibility scoping process.

c. Significant topics that will be discussed in the DEIS include the level of flood protection provided by the alternatives; hydrology of the Caliente Creek drainage basin; planning objectives; alternatives analysis; impacts on fish and wildlife resources, vegetation, endangered species, recreation, esthetics, cultural resources;

and cumulative impacts of related projects in the study area.

d. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS.

e. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the DEIS. All interested persons are encouraged to respond to this notice and provide a current address if they wish to be notified about the DEIS.

4. Availability

The DEIS is scheduled to be available for public review and comment in January 1996.

Laurence R. Sadoff,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 92-28646 Filed 11-25-92; 8:45 am]

BILLING CODE 5000-BF-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. ER93-143-000, et al.]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. ER93-143-000]

November 17, 1992.

Take notice that on November 12, 1992, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to fourteen of its Rate Schedules:

Rate schedule	Supplement No.	Person receiving service
55.....	10	Philadelphia Electric Company (PECO).
56.....	10	Public Service Electric and Gas Company (Public Service).
57.....	10	Northeast Utilities (NU).
69.....	7	NU.
70.....	5	Niagara Mohawk Power Corporation (Mohawk) and Pennsylvania Power & Light Company (PP&L).
71.....	5	New England Power Co. (NEP).
74.....	8	PP&L.
75.....	9	GPU Service Corporation (GPU).
78.....	13	Power Authority of the State of New York (the Power Authority).

Rate schedule	Supplement No.	Person receiving service
82.....	6	Baltimore Gas & Electric Company (BG&E).
83.....	6	Atlantic City Electric Company (Atlantic).
84.....	6	Connecticut Municipal Electric Energy Cooperative (CMEEC).
88.....	5	Boston Edison (BE).
95.....	3	Long Island Lighting Company (LILCO).

The Supplements provide for a decrease in rate from 2.6 mills to 2.5 mills per kWh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus decreasing annual revenues under the Rate Schedules by a total of \$103,266.10. Con Edison has requested waiver of notice requirements so that the Supplements can be made effective as of September 1, 1992.

Con Edison states that copies of this filing have been served by mail upon PECO, Public Service, NU, Mohawk, PP&L, NEP, GPU, the Power Authority, BG&E, Atlantic, CMEEC, BE and LILCO.

Comment date: November 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Co.

[Docket No. ER93-140-000]

November 17, 1992.

Take notice that on November 10, 1992, Idaho Power Company (IPC) tendered for filing an amendment to the Transmission Facilities Agreement, dated June 1, 1974, and an amendment to the Restated Transmission Services Agreement (RTSA), dated February 6, 1992. Both Agreements are between Idaho Power Company and PacifiCorp. The amendments relate to installation of additional facilities to increase transfer capacity west from the Jim Bridger Power Project.

IPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the amendment of the RTSA to be filed in excess of 120 days prior to commencement of service.

Comment date: November 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Co. and Public Service Electric & Gas Co.

[Docket No. ER93-142-000]

November 17, 1992.

Take notice that on November 10, 1992, Delmarva Power & Light Company (DPL) on behalf of itself and Public Service Electric and Gas Company

(PSE&G) tendered for filing as an initial rate under Section 205 of the Federal Power Act and Part 35 of the regulations issued thereunder, an Agreement between DPL and PSE&G dated November 9, 1992.

DPL states that the Agreement sets forth the terms and conditions for the sale of import capability which each party expects to have available for sale from time to time and the purchase of which will be economically advantageous to the other party. The rate for these services are negotiated but will not exceed \$5.50 per MWh. In order to optimize the economic advantages to both DPL and PSE&G, DPL requests that the Commission waive its customary notice period and allow this Agreement to become effective on November 30, 1992.

DPL states that a copy of this filing has been sent to PSE&G and will be furnished to the New Jersey Board of Regulatory Commissioners, Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: November 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ES93-11-000]

November 18, 1992.

Take notice that on November 5, 1992, Niagara Mohawk Power Corporation (NMPC) filed an application with the Federal Energy Regulatory Commission under 204 of the Federal Power Act requesting authorization to issue on or before December 31, 1994, Drafts issued pursuant to a Bankers Acceptance Facility Agreement in an amount not exceeding \$100 million and short-term unsecured notes, commercial paper and other obligations in an aggregate principal amount outstanding at any time in an amount not exceeding an amount equal to 10% of the aggregate of total consolidated surplus and secured indebtedness of NMPC and its wholly-owned subsidiaries and the capital of NMPC plus \$50 million, with maturity no later than December 31, 1995.

Comment date: December 4, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Citizens Utilities Co.

[Docket No. ES93-12-000]

November 18, 1992.

Take notice that on November 12, 1992, Citizens Utilities Company (Citizens) filed an application with the Federal Energy Regulatory Commission under 204 of the Federal Power Act

requesting authorization to issue not more than 25,750 shares of Common Stock Series B of Citizens in a merger of Franklin Electric Light Company of Franklin, Vermont, into Citizens. Also, Citizens requests exemption from the Commission's competitive bidding regulations.

Comment date: December 11, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Co.

[Docket No. ER92-812-000]

November 18, 1992.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on November 9, 1992, tendered for filing an amendment to its original September 1 submission this docket. The amendment contains narrative descriptions of the bases of Period II estimates and related workpapers. A description of the purchased economic power operating protocol is also included.

Wisconsin Electric requests an effective date sixty days after the filing date.

Copies of the amendment to the filing have been served on all parties on the service list.

Comment date: December 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Midwest Power Systems, Inc.

[Docket No. ER92-846-000]

November 19, 1992.

Take notice that on November 12, 1992, Midwest Power Systems Inc. (MWPS) tendered for filing Amendment No. 3 to Notices of Cancellation. This amendment is filed for the purpose of amending the Interconnection and Interchange Agreement between Interstate Power Company and Iowa Public Service Company (Rate Schedule FPC No. 42).

Copies of this filing has been served upon the Interstate Power Company and the Iowa Utilities Board.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Fitchburg Gas and Electric Light Co.

[Docket No. ER92-88-000]

November 19, 1992.

Take notice that on November 10, 1992, Fitchburg Gas and Electric Light Company filed a revised refund report in this proceeding. This revised report eliminates a refund to New England Power Company; this revision is due to the creation of an "amnesty period" for certain service agreements in New England Power Co., 61 FERC ¶ 61,015

(1992), which obviates the need for a refund of amounts collected over variable operation and maintenance expenses per the Commission's order of September 30, 1992 in this docket. No other provisions of Fitchburg's October 30, 1992 refund report have been affected. Fitchburg states the copies of the revised report have been served on the affected customers and on the service list.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Mississippi Power Co.

[Docket No. ER93-113-000]

November 19, 1992.

Take notice that on November 4, 1992, Mississippi Power Company (Mississippi) tendered for filing revised Service Deliver Point Contracts between Mississippi, Coast Electric Power Association, Singing River Electric Power Association and East Mississippi Electric Power Association.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. The Detroit Edison Co.

[Docket No. ER93-13-000]

November 19, 1992.

Take notice that The Detroit Edison Company (Detroit Edison) on November 9, 1992, filed additional cost support for executed service agreements between Detroit Edison, the City of Croswell and the Thumb Electric Cooperative, for the sale of experimental seasonal peaking capacity and energy.

Detroit Edison requests an effective date of October 1, 1992 for the service agreement executed with the City of Croswell and an effective date of November 1, 1992 for the service agreement executed with Thumb Electric Cooperative.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER91-835-000]

November 19, 1992.

Take notice that PacifiCorp on November 6, 1992, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations an amendment to its filing of the Red Butte Interconnection Agreement between PacifiCorp and Utah Associated Municipal Power Systems dated December 21, 1990.

Copies of this filing were supplied to UAMPS, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Co.

[Docket Nos. EC93-5-000, EL93-5-000 and ER93-133-000]

November 19, 1992.

Take notice that on November 9, 1992, Portland General Electric Company (PGE) filed a Petition for a Declaratory Order to Remove Uncertainties About the Implementation of Amnesty Periods, filings pursuant to Section 205 of the Federal Power Act, one of which included a Certificate of Concurrence filed on behalf of Fale-Safe, Inc., and requests for waivers.

PGE requested the Commission to issue a declaratory order to remove uncertainties about the Commission's implementation of the policy initiative announced in Central Maine Power Company, 56 FERC ¶ 61,200, *reh'g denied*, 57 FERC ¶ 61,083 ((1991)). PGE also submitted various rate filings and notices of concurrence under the limited amnesties announced in Florida Power Corporation, 61 FERC ¶ 61,063 (1992), and New England Power Company, 61 FERC ¶ 61,015 (1992). PGE requested the Commission to clarify ambiguities that remain with respect to its implementation of its amnesty periods, and to grant waivers of notice.

Each party listed was served with a copy of the Petition, each purchaser under each rate schedule was sent a copy of the applicable filing, and each state commission was sent copies of the filings pertaining to purchasers within its jurisdiction.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of Colorado

[Docket No. ER92-873-000]

November 19, 1992.

Take notice that on November 13, 1992, Public Service Company of Colorado (Public Service) filed with the Commission an executed copy of a Contract for Transmission Service between Public Service and Tri-State Generation and Transmission Association, Inc. Public Service had previously committed to submit an executed copy of the Contract when it filed, among other things, an unexecuted copy thereof on September 30, 1992.

Public Service states that copies of the filing have been served on the parties in this docket.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Co.

[Docket No. ER93-96-000]

November 19, 1992.

Take notice that on November 3, 1992, Delmarva Power & Light Company (Delmarva) tendered for filing an amendment in the above-referenced docket.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power Corp.

[Docket No. ER92-786-000]

November 19, 1992.

Take notice that on November 13, 1992, Florida Power Corporation (Florida Power) tendered for filing a replacement for Attachment F-2, which sets out the rates for Assured Capacity under its interchange agreement with Oglethorpe Power Corporation. Florida Power states that the replacement substitutes 1992 rates for 1991 rates that were inadvertently submitted with its November 6, 1992 filing.

Florida Power requests that the Commission waive its notice requirements and allow the revised contract to become effective on October 17, 1992, which is 60 days after its initial filing. If the Commission denies the requests for waiver, Florida Power requests that the contract become effective on January 13, 1993.

Florida Power states that a copy of the filing has been posted in accord with Commission regulations and that a copy has been mailed to each customer affected by the filing and to the Florida Public Service Commission.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Co.

[Docket No. ER92-652-000]

November 19, 1992.

Take notice that on November 2, 1992, Northern States Power Company (Northern States) tendered for filing an amendment to the above-referenced docket.

Comment date: December 3, 1992, in accordance with Standard paragraph E at the end of this notice.

17. Indiana Michigan Power Co.

[Docket No. ER93-112-000]

November 19, 1992.

Take notice that on November 4, 1992, Indiana Michigan Power Company (IMP) tendered for filing Executed Service Agreements between the City of Auburn, Indiana and the Wabash Valley Power Association.

Comment date: December 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28743 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP93-59-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Co.

[Docket No. CP93-59-000]

November 18, 1992.

Take notice that on November 10, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP93-59-000 a request pursuant to § 157.205 of the Commission's Regulations to operate as a delivery point an existing tap at the OXY Aledo Sweetening Plant (OXY) in Dewey County, Oklahoma under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to operate and maintain an existing receipt point at OXY as a delivery point for the redelivery of up to 1,000 dt per peak day and 365,000 dt per year, respectively, of purge gas to the OXY plant under

Panhandle's Rate Schedule PT-interruptible. Panhandle states that since this is an existing facility and OXY is providing the necessary equipment, there would be no reimbursement of cost to Panhandle.

Comment date: December 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP93-54-000]

November 17, 1992.

Take notice that on November 6, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93-54-000 an application, pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon certain interruptible gas transportation services to James River Corporation of Virginia (James River), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that on December 27, 1984, Transco and James River entered in a service agreement whereby Transco receives and transports on an interruptible basis up to 21,000 dekatherms per day of natural gas for James River from various receipt points and redelivers to Tennessee equivalent quantities at an existing interconnection between Transco and Marengo Corporation (Marengo) in Choctaw County, Alabama. It is stated that Marengo then delivers the gas to James River's Pulp mill in Naheola, Alabama.

It is also stated that such service was under Transco's Rate Schedule X-255 and was authorized by a Commission order issued December 20, 1985 in Docket No. CP85-390, as amended by order issued on July 31, 1987.

It is asserted that the primary term of the service agreement expired December 19, 1990. Transco maintains that by letter dated December 10, 1991, Transco provided James River written notice of termination of Rate Schedule X-255 and to seek Commission authorization for the abandonment of Rate Schedule X-255. In addition, it is stated that James River was offered replacement interruptible transportation service under Transco's blanket certificate and Rate Schedule IT, which James River subsequently decided to take.

It is also stated that Transco requests waiver of the General Terms and Conditions of its FERC Gas Tariff to the extent necessary to allow replacement Rate Schedule IT interruptible service for James River to maintain the same

level and queue priority as that which existed under Rate Schedule X-255.

Comment date: December 8, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP93-58-000]

November 17, 1992.

Take notice that on November 9, 1992, Arkla Energy Resources, a division of Arkla, Inc. (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93-58-000 a request pursuant to §§ 157.205, 157.211, 157.212 and 157.216 of the Commission's Regulations for authorization to construct and operate certain facilities in Arkansas and Louisiana and to abandon certain facilities in Louisiana, under AER's blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that AER proposes (1) to upgrade two existing meter stations for increased deliveries; (2) to operate one existing tap for delivery of gas for resale to a consumer other than the right-of-way grantor for whom the tap was originally installed; and (3) to abandon one domestic sales tap in Louisiana, all for the delivery of gas sold to Arkansas Louisiana Gas Company for resale to domestic and commercial consumers in Arkansas and Louisiana.

Comment date: January 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. Southern Natural Gas Co.

[Docket No. CP93-55-000]

November 17, 1992.

Take notice that on November 6, 1992, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP93-55-000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act for authorization to modify its existing facilities in order to operate a sales tap under the certificate issued in Docket No. CP82-406-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to operate a sales tap in order to deliver gas to Russell Resources, Inc. (Russell) for use as gas lift gas at its production facilities in Bayou Long field, Iberia Parish, Louisiana. Southern States that it plans

to modify its existing Bayou Long No. 2 receiving station at or near milepost 4.463 on its Bayou Pigeon line in Iberia Parish, Louisiana, to enable it to deliver gas to Russell at that location. Southern further states that Russell anticipates requesting up to 100 Mcf of natural gas per day for delivery at the proposed sales tap. Southern estimates that the cost of making the necessary modifications to the station is approximately \$8,400.

Comment date: January 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Co.

[Docket No. CP93-63-000]

November 17, 1992.

Take notice that on November 12, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP93-63-000 a request pursuant to §§ 157.205 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon the transportation of natural gas to Gulf States Utilities Company (Gulf States), a direct sales industrial customer, under United's blanket authorization issued in Docket No. CP82-430-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

United seeks authorization to abandon the transportation of gas for firm delivery to Gulf States' Roy Nelson and Willow Glen power plants located in Calcasieu Parish and Iberville Parish, Louisiana.

United states that it and Gulf States have mutually agreed to cancel the direct sale contract effective March 1, 1992.

United states that there will be no abandonment of facilities. United further states that it will leave existing facilities in place in order to continue to provide for delivery of natural gas under United's ITS and FTS rate schedules.

Comment date: January 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

6. Superior Offshore Pipeline Co.

[Docket No. CP93-57-000]

November 17, 1992.

Take notice that on November 6, 1992, Superior Offshore Pipeline Company (SOPCO), 12450 Greenspoint Drive, Mail Code 4-4, Houston, Texas, 77060-1991, filed in Docket No. CP93-57-000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)) for a declaratory order (1) disclaiming jurisdiction over all facilities SOPCO

owns and operates and declaring them to be gathering facilities exempt from the provisions of the NGA and the Natural Gas Policy Act of 1978; (2) rescinding, as unnecessary, previously issued certificates of public convenience and necessity relating to these facilities and the services performed thereon; and (3) terminating, as moot, SOPCO's pending Order No. 636 restructuring proceeding, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Comment date: December 8, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Northern Natural Gas Co.

[Docket No. CP93-66-000]

November 17, 1992.

Take notice that on November 12, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP93-66-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate and maintain an existing delivery point to accommodate unrestricted natural gas deliveries to Omaha Metropolitan Utilities District (Omaha MUD), under the certificate issued to Northern in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that the construction and operation of the existing delivery point, located in Saunders County, Nebraska, was authorized pursuant to section 311 of the Natural Gas Policy Act of 1978 and is restricted to use for section 311 transportation. Northern requests authorization herein to operate and maintain the delivery point for unrestricted service to Omaha MUD under Northern's current effective rate schedule.

Northern states that no increase in capacity at the delivery point is required. Northern further states that the total present and proposed peak day and annual volumes delivered to Omaha MUD at the delivery point are 250 Mcf on a peak day and 37,000 Mcf on an annual basis. It is stated that the end use of such volumes will be residential, commercial and industrial.

Comment date: January 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

8. Texas Gas Transmission Corp.

[Docket No. CP93-64-000]

November 18, 1992.

Take notice that on November 12, 1992, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP92-64-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point for Alcan Aluminum (Alcan) in Henderson County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to add the delivery point in order to provide interruptible transportation service to Alcan, which has been receiving gas from Western Kentucky Gas Company, a local distribution company, and Orbit Gas Company, an intrastate pipeline. It is stated that Texas Gas will use the proposed delivery point for the delivery of up to 10,000 MMBtu equivalent of natural gas per day for Alcan. It is asserted that Texas Gas will provide the transportation service under its blanket certificate issued in Docket No. CP88-686-000 and pursuant to the terms of its IT Rate Schedule. Texas Gas states that the deliveries would have no impact on its peak day or annual deliveries. It is explained that Alcan will install and own a pipeline to connect its facilities to those of Texas Gas.

Comment date: January 4, 1993, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28744 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. C193-7-000]

Chattanooga Gas Co.; Notice of Application for Blanket Certificate With Pregranted Abandonment

November 20, 1992.

Take notice that on November 13, 1992, Chattanooga Gas Company (Chattanooga) filed an application under section 7 of the Natural Gas Act for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of: All

categories of Natural Gas Policy Act gas subject to the Commission's jurisdiction; imported gas, including liquefied natural gas; gas sold under pipeline interruptible sales certificates; and any gas purchased from non-first sellers, including intrastate pipelines and local distribution companies. The application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before December 11, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Chattanooga will not have to appear or be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28794 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-4-4-000 and TM93-5-4-000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in Rates

November 20, 1992.

Take notice that on November 17, 1992, Granite State Gas Transmission, Inc., 300 Friberg Parkway, Westborough, Massachusetts 01581-5039 tendered for filing with the Commission Revised Twenty-First Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on November 2, 1992.

According to Granite State, it filed an out-of-cycle purchased gas cost adjustment on November 2, 1992 in Docket Nos. TQ93-3-4-000 and TM93-2-4-000. Granite State further states that in deriving its sales rates in that filing for sales to its distribution company affiliates, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) costs were reflected for a storage service provided to Granite State by Tennessee Gas Pipeline Company (Tennessee) under the latter's

Rate Schedule SS-NE. It is further stated that the Tennessee Rate Schedule SS-NE costs were included in deriving the sales rates pursuant to a temporary waiver of the Commission's purchased gas cost adjustment regulations granted to Granite State in Docket No. CP92-197, such waiver to extend until Commission action on Granite State certificate application in Docket No. CP92-552-000.

Granite State further states that the Commission issued an "Order Issuing Certificate and Granting Abandonment" in Docket No. CP92-552-000 on November 2, 1992. According to Granite State, in the certificate order, the Commission authorized Granite State to reduce its firm daily sales obligations to Bay State and Northern Utilities and to provide an equivalent quantity of daily replacement service through its Rate Schedule SS-NE storage service modelled on Tennessee's Rate Schedule SS-NE storage service.

According to Granite State it is concurrently filing a compliance filing in Docket No. CP92-552-000 to establish a Rate Schedule SS-NE storage service in its tariff pursuant to which it will hereafter collect the Tennessee Rate Schedule SS-NE charges from its customers. In this filing, Granite State states that it has removed \$362,448 related to Tennessee's Rate Schedule SS-NE which were reflected in deriving the sales rates in its prior filing. Also, Granite State further states that it has reduced the demand billing determinants in deriving the adjusted sales rates in this filing to coincide with the reduction in its firm sales obligations to Bay State and Northern Utilities also authorized in the certificate order in Docket No. CP92-552-000. According to Granite State, no other changes were made to the costs and sales underlying the rates filed in its out-of-cycle filing on November 2, 1992.

Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28791 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT93-2-000]

Northwest Pipeline Corp.; Notice of Report of Refunds

November 20, 1992.

Take notice that Northwest Pipeline Corporation (Northwest), on October 13, 1992, tendered for filing its report of refunds concerning Gas Inventory Charge (GIC) revenues it collected in 1991, and refunded to it jurisdictional sales customers on September 30, 1992. Northwest states that during 1991, it collected \$3,189,634 in GIC revenues. Section 21 of the General Terms and Conditions of Northwest's Volume No. 1 Tariff limits GIC collection in any applicable year to (1) the total of all Buyers' annual exemption level less actual takes multiplied by the GIC for the year, or (2) the total volumetric deficiency incurred by Northwest under all of its gas purchase contracts for the applicable year multiplied by the GIC.

Northwest asserts that according to its calculations for the 1991 calendar year, Northwest has incurred no take-or-pay deficiencies under any of its gas purchase contracts. Northwest states that even though their calculations indicates that no deficiencies incurred, producers have the right to challenge its take-or-pay calculations at any time up to two years after each production year. In anticipation that some producers will make claims for 1991 deficiencies, Northwest proposes to retained ten percent of the 1991 GIC revenues received. Northwest states that on September 30, 1992, it refunded \$3,036,248.35 to its jurisdictional sales customers that paid a GIC applicable to calendar year 1991.

Northwest further states that the \$3,036,248.35 figure is comprised of (1) \$2,870,670.68 which represents ninety percent of the GIC revenues received by Northwest, and (2) \$165,577.67 which represents interest calculated on GIC revenues received from the invoice payment date through the September 30, 1992 refund date.

Northwest further states that the ten percent of revenues withheld, less any actual 1991 deficient volumes multiplied

by the GIC will be fully refunded with interest at the end of 1993 to the extent that no producer claims for the 1991 year are asserted.

Northwest states that a copy of the refund report is being served on affected customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 925 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28771 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-119-002]

Pacific Interstate Offshore Co.; Notice of Compliance Filing

November 20, 1992.

Take notice that on November 10, 1992, Pacific Interstate Offshore Company ("PIOC") tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 1, 1992 in compliance with the Commission's Letter Order dated October 29, 1992:

Second Revised Sheet No. 4

First Revised Sheet No. 5

First Revised Sheet No. 8

First Revised Sheet No. 17

PIOC states that copies of the filing were served to all intervenors and interested parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28774 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-166-004]

Panhandle Eastern Pipe Line Co.; Notice of Compliance Filing

November 20, 1992.

Take notice that on November 18, 1992 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing revised tariff sheets in the above-mentioned proceeding.

Panhandle states that the revised tariff sheets to be effective November 1, 1992 comply with the requirements of the Commission's November 16, 1992 Order on Rehearing in this proceeding and are without prejudice to Panhandle's rights on rehearing or judicial review in connection with the various Commission orders affecting this filing.

Panhandle states that in its June 1, 1992 Order Terminating Technical Conference Proceeding, Granting Rehearing in Part and Denying Rehearing in Part in Docket No. RP91-229-000, the Commission required Panhandle to alter the functionalization of its cost of service to reflect the current functionalization of facilities. 59 FERC at 61,893. Panhandle reflected that functionalization in its rates in Docket No. RP91-229-000 in a compliance filing submitted on July 31, 1992. In a subsequent Order Granting Rehearing in Part and Denying Rehearing in Part, in Docket No. RP91-229-007, 61 FERC ¶61,172 issued November 2, 1992, however, the Commission reversed itself and determined that Panhandle should be permitted to reflect the refunctionalization of facilities. Panhandle states that contemporaneously with the instant filing, it is filing an amendment to Docket No. CP90-1050-000 to clarify the material in this proceeding and to identify the specific facilities for which Panhandle seeks a certificate and/or refunctionalization from gathering to transmission. Accordingly, the rates herein reflect the changes in Docket No. CP90-1050-000 so that the certificate and rates conform to one another.

Panhandle states that it has also reflected the requirements of the November 16, 1992 Order on Rehearing to change the allocation of gathering costs between sales and transportation and to reflect what the Commission

characterized as the allocation of fixed costs for the return on equity and related taxes.

In addition, Panhandle states that in its June 1, 1992 Order on Report Filed Pursuant to Opinion No. 369 and Motion Rate and Compliance Filing (59 FERC ¶61,246 (1992)), the Commission required Panhandle's rate for certain specified backhaul services to equal one-half the forward-haul rate. This requirement is reflected in the rates submitted herewith.

Panhandle states it has reflected the elimination, effective November 1, 1992 of costs associated with Trunkline Gas Company, consistent with the provisions of article VII, section 6 of the July 15, 1992 Settlement in Docket Nos. RP91-229-009, *et al.*, approved by Order of the Commission issued August 28, 1992.

In addition, Panhandle states that on October 29, 1992 the Commission permitted tariff sheets to become effective on November 1, 1992 implementing Rate Schedule FS. Accordingly, Panhandle has removed 10 Bcf of storage inventory and the costs assigned to Rate Schedule FS from the rates in this proceeding.

Panhandle states it has reflected the reduced settlement cost components associated with its former Canadian suppliers, as set forth in the October 2, 1992 Settlement in Docket Nos. RP91-229-012, *et al.* approved by order of the Commission issued October 30, 1992.

Panhandle states that the rates and tariffs submitted herewith also reflect ACA and PGA filings in Docket No. TM92-4-28-000, Docket No. TM93-1-28-000, TQ92-5-28-000 and Docket No. TQ93-1-28-000, which have been made since Panhandle's rate filing of May 1, 1992, the latter of which is to be effective December 1, 1992.

Panhandle states that copies of the revised tariff sheets are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28772 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-140-015]

Questar Pipeline Co.; Notice of Tariff Filing

November 20, 1992.

Take notice that Questar Pipeline Company on November 16, 1992, tendered for filing and acceptance to be effective as listed below the following tariff sheets to Original Volume Nos. 1, 1-A, 2-A and 3 of its FERC Gas Tariff:

	Effective date
Original Volume No. 1:	
Substitute Twentieth Revised Sheet No. 12.	Sept. 1, 1992.
Substitute Twenty-First Revised Sheet No. 12.	Oct. 1, 1992.
Substitute Twenty-Second Revised Sheet No. 12.	Dec. 1, 1992.
Substitute Twenty-Third Revised Sheet No. 12.	Jan. 1, 1993.
Original Volume No. 1-A:	
Substitute Eighth Revised Sheet No. 5.	Oct. 1, 1992.
Substitute Ninth Revised Sheet No. 5.	Jan. 1, 1993.
Substitute Third Revised Sheet No. 5A.	Oct. 1, 1992.
Substitute Fourth Revised Sheet No. 5A.	Jan. 1, 1993.
Original Volume No. 2-A:	
Substitute Third Revised Sheet No. 4.	Oct. 1, 1992.
Original Volume No. 3:	
Substitute Ninth Revised Sheet No. 8.	Oct. 1, 1992.
Substitute Tenth Revised Sheet No. 8.	Jan. 1, 1993.

Questar states that this filing integrates into tariff sheets filed subsequent to its offer of settlement in Docket No. RP91-140-000, -001, base rates approved by the Commission in its November 3, 1992, order in that docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-28792 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8369-019]

Village of Saranac Lake, New York; Notice of Petition for Declaratory Order

November 20, 1992.

Public notice is given that on September 24, 1992, the Village of Saranac Lake, New York (petitioner), licensee for Project No. 8369, filed a petition for declaratory order with the Federal Energy Regulatory Commission. The petition seeks a determination from the Commission that petitioner's proposed financing arrangement with Lake Flower Hydro, Inc. (Lake Flower), a non-licensee, is consistent with the Federal Power Act; neither violates any law, rule or regulation, nor impairs petitioner's rights under its license for Project No. 8369; and does not require transfer of petitioner's license or require Lake Flower to become a licensee.

Under the proposed arrangement, Lake Flower, a New York not-for-profit corporation whose board of directors is comprised of officers of petitioner, will obtain financing for project construction from commercial banking sources—which New York law bars petitioner from doing—and will receive, for use as collateral to secure repayment of its obligations, an assignment of petitioner's rights to receive payments under petitioner's power purchase agreement with Niagara Mohawk Power Corporation, and a leasehold interest in project property. Copies of the assignment and lease are attached to the September 24, 1992 petition.

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 210, 211, and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.210, 385.211, 385.214 (1992). All such comments, protests, and motions should be filed by December 27, 1992. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only persons that file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Copies of the petition

for declaratory order are on file with the Commission and are available for public inspection. Copies of the petition for declaratory order may also be obtained from William F. Madden, III, Sullivan, Donovan, Bond & Bonner, 415 Madison Avenue, New York, New York 10017.

Lois D. Cashell,
Secretary.

[FR Doc. 92-28793 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT93-8-000]

**Texas Eastern Transmission Corp.;
Notice of Proposed Changes in FERC
Gas Tariff**

November 20, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 5, 1992 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, six copies of the following tariff sheet:

Rate Schedule X-28

Second Revised Sheet No. 234

Texas Eastern states that Texas Eastern and Transcontinental Gas Pipe Line Corporation (Transco) are parties to a storage service agreement dated December 8, 1953 and designated as Rate Schedule X-28 contained on Sheet Nos. 229 through 248 of Texas Eastern's FERC Gas Tariff, Original Volume No. 2.

Texas Eastern states that by mutual agreement Texas Eastern and Transco desire to increase Texas Eastern's minimum pressure obligation from 435 psig to 500 psig at the delivery point where Texas Eastern's two 12" Staten Island laterals interconnect with Transco's 30" main line (designated as Transco's Linden Station). Second Revised Sheet No. 234 is being filed herewith solely to reflect such pressure change.

The proposed effective date of the tariff sheets is November 15, 1992.

Texas Eastern states that copies of the filing were posted in accordance with 18 CFR 154.16, and a copy was served on Transco.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 30, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-28773 Filed 11-25-92; 8:45 am]

BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION
AGENCY**

[FRL-4539-2]

**Proposed Consent Decree; Federal
Procurement Regulations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed consent decree concerning litigation instituted against the Environmental Protection Agency ("EPA") regarding the fact that EPA has not promulgated a final rule to implement section 613 of the Act, which requires EPA to promulgate regulations requiring each federal agency to conform its procurement regulations to the policies and requirements of subchapter VI of the Act (which deals with stratospheric ozone protection) and to maximize the substitution of safe alternatives identified under section 612 of the Act. The proposed consent decree would require EPA to propose such a rule by March 1, 1993, and promulgate a final rule by October 15, 1993.

For a period of thirty [30] days following the date of publication of this notice, the Agency will accept written comments relating to the consent decree. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the consent decree are available from Betty S. Mobley, Air and Radiation Division (LE-132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7606. Written comments should be sent to George B. Wyeth at the above address and must be submitted on or before December 28, 1992.

Dated: November 10, 1992.

Raymond B. Ludwizewski,
Acting General Counsel.

[FR Doc. 92-28816 Filed 11-25-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4539-6]

**Environmental Impact Statements;
Notice of Availability**

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Availability of Environmental Impact Statements Filed November 16, 1992 Through November 20, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920454, DRAFT EIS, NPS, WY, Fort Laramie National Historic Site, General Management Plan and Development Concept Plan, Implementation, Fort Laramie, Coshen County WY, Due: February 01, 1993, Contact: Gary Candelarie (307) 837-2221.

EIS No. 920455, DRAFT EIS, FAA, AK, Anchorage International Airport Instrument Landing Systems (ILS), Construction and Operation, Install ILS on Runway 14, Approval, Funding and Section 404 Permit, Anchorage, AK, Due: January 20, 1993, Contact: Mel Leskinen (907) 271-5199.

EIS No. 920456, DRAFT EIS, FHWA, CA, CA-168 Freeway Transportation Project, Construction, CA-168 between CA-180 and Temperance Avenue, Funding and Section 404 Permit, City of Fresno, Fresno County, CA, Due: January 15, 1993, Contact: Leonard E. Brown (916) 551-1140.

EIS No. 920457, DRAFT EIS, FHWA, MI, U.S. 131 Improvement and Relocation, South of Cadillac to North of Manton, Funding and Section 404 Permit, Wexford County, MI, Due: December 28, 1992, Contact: Norman Stoner (517) 377-1838.

EIS No. 920458, DRAFT EIS, AFS, CA, Echo Summit Ski Area Site, Operation and Management, Issue Special Use Permit, El Dorado National Forest, Placerville Ranger District, El Dorado County, CA, Due: January 25, 1993, Contact: Diana Erickson (916) 622-5061.

EIS No. 920459, FINAL EIS, GSA, TX, Del Rio Border Station Facilities Expansion, Funding, Val Verde County, TX, Due: December 28, 1992, Contact: Shelly Rives (817) 334-4234.

EIS No. 920460, DRAFT EIS, FHWA, CA, CA-125/54 Freeway Transportation Project, Construction, West of Worthington Street, County of San Diego to CA-94 in the City of Lemon Grove, Funding and Section 404 Permit, Regional Transportation Plan (RTP), San Diego County, CA, Due: January 08, 1993, Contact: Leonard E. Brown (916) 551-1307.

EIS No. 920461, FINAL EIS, FHWA, AL, William S. Keller Bridge Replacement on US-31 across the Tennessee River, City of Decatur, Funding, Coast Guard Bridge Permit, COE Section 404 Permit and TVA Section 26a Permit, Morgan and Limestone

Counties, AL. Due: December 28, 1992.
Contract: Joe D. Wilkerson (205) 223-7374.

EIS No. 920462, DRAFT EIS, AFS, OR,
Bornite Underground Copper Mine Project,
Construction and Operation, Approval of
Plan of Operation, Special-Use-Permit,
NPDES Permit and Section 404 Permit,
Willamette National Forest, Detroit Ranger
District, Marion County, OR. Due: January
11, 1993. Contact: Vincent Puleo (503) 854-
3366.

EIS No. 920463, REVISED DRAFT EIS, DOE,
MO, Weldon Spring Site, Remedial Action/
Feasibility Study for Chemical Plant,
Funding, National Priorities List, St.
Charles County, MO. Due: January 20, 1993.
Contact: Stephen McCracken (314) 441-
8086.

Dated: November 23, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-28913 Filed 11-25-92; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4539-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 9, 1992 through November 13, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-DNA-G09800-00 Rating EC2,
Superconducting Magnetic Energy Storage—
Engineering Test Model Program,
Construction, Testing, Operation, Conceptual
Designs and Selection Site, Otero and Lincoln
Counties, NM; Ward Co., TX; Sauk Co; WI
and Benton and Franklin Counties, WA.

Summary

EPA had environmental concerns on the proposed project and requests additional information concerning potential electromagnetic fields and stormwater permitting actions.

ERP No. D-FHW-F40326-WI Rating EC2

US 10 Highway Transportation
Improvement, US 45 to US 41 in the City of
Appleton, Funding and Section 404 Permit,
Winnebago County, WI.

Summary

EPA expressed concerns for the avoidance of wetlands and for noise impacts. EPA

asked for additional information regarding sediment sampling data for possibly contaminated sediments.

ERP No. D-NPS-L61193-WA Rating EC2

Hanford Reach of the Columbia River
Comprehensive River Conservation Study,
Designation or Nondesignation, National
Wildlife Refuge with Wild and Scenic River
Overlay, Benton, Grant and Franklin
Counties, WA.

Summary

EPA had environmental concerns with the proposed action based primarily in surface water and groundwater contamination from the Hanford Site. Other concerns include the proposal's impact on future Hanford Site use planning and cleanup standards, interagency coordination, and land easement acquisition. Additional information is requested to clarify the site's contamination problem; the ramifications of establishing a river designation that could increase recreational use and human exposure to contaminated areas; and acquisition authority for land and easement acquisition.

Final EISs

ERP No. F-BLM-K67015-CA

Baltic Open-Pit Heap Leach Gold and
Silver Mine Project, Construction and
Operation, Plan of Operation, Reclamation
Plan, Mining Reclamation Plan and
Conditional Use Permit, Approval, Kern
County, CA.

Summary

EPA had no objections to the proposed action.

ERP No. F1-FAA-F51037-MI

Detroit Metropolitan Wayne County
Airport, Air Traffic Control Noise Abatement
Procedures, Implementation and Completion
of the Master Plan Development, Wayne
County, MI.

Summary

EPA felt the impact within the 60 to 65 LDN contour needs to be assessed and addressed in the part 150 mitigation study.

Dated: November 23, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-28914 Filed 11-25-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4539-3]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act; BFI-Rockingham Landfill Site, Rockingham, VT

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Disposal Specialists, Inc. and Browning-Ferris Industries of Vermont, Inc. for costs incurred by EPA in conducting response actions at the BFI-Rockingham Landfill Superfund Site in Rockingham, Vermont as of January 31, 1992.

DATES: Comments must be provided on or before December 28, 1992.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: In the Matter of BFI-Rockingham Landfill Superfund Site, Rockingham, VT, U.S. EPA Docket No. I-92-1052.

FOR FURTHER INFORMATION CONTACT: Edward Hathaway, U.S. Environmental Protection Agency, Waste Management Division, HPS-CAN1, JFK Federal Building, Boston, Massachusetts 02203, (617) 573-5782.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the BFI-Rockingham Landfill Superfund Site in Rockingham, VT. The settlement was approved by EPA Region I on November 1, 1992, subject to review by the public pursuant to this Notice. Disposal Specialists, Inc. and Browning-Ferris Industries of Vermont, Inc., the Settling Parties, have executed signature pages committing them to participate in the settlement. Under the proposed settlement, the Settling Parties are required to pay \$84,244.29 to the Hazardous Substances Superfund. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of section 122(h) of CERCLA. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle a claim under section 107 of CERCLA for costs

incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice approved this settlement in writing on September 17, 1992. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice.

A copy of the proposed administrative settlement may be obtained in person or by mail from the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCC, Boston, Massachusetts 02203, (617) 565-3351.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCC, Boston, Massachusetts (U.S. EPA Docket No. I-92-1052).

Dated: November 17, 1992.

Patricia Meaney,

Acting Regional Administrator.

[FR Doc. 92-28817 Filed 11-25-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

Dated: November 17, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None

Title: Density Pricing Zone Plans—Expanded Interconnection with Local Telephone Company Facilities, Report and Order, CC Docket No. 91-141

Action: New collection

Respondents: Businesses or other for-profit

Frequency of Response: On occasion reporting

Estimated Annual Burden: 16 responses; 200 hours average burden per response; 3,200 hours total annual burden

Needs and Uses: In the attached Report and Order, the Commission required Tier 1 local exchange carriers (LECs), except Puerto Rico Telephone Company, to provide expanded opportunities for third-party interconnection with their interstate special access facilities. The Commission concluded that expanded interconnection will likely increase competition. Increased competition, in turn, will produce significant benefits for consumers that will outweigh any potential drawbacks. Some of the expected benefits of expanded interconnection include: Increased customer choice; greater incentives for improved service quality and responsiveness to customers; greater incentives for telephone companies and other providers to improve operational efficiency; more rapid deployment of new technologies; reductions in rates for services subject to competition toward cost; and increased opportunities for customers to obtain diversity routed, redundant facilities. Increased competition in the provision of long distance service and customer premises equipment led to similar benefits in the past. Under the rules adopted in the Order, Tier 1 LECs, except for Puerto Rico Telephone Company, are required to provide expanded interconnection through physical collocation to all interconnectors that request it, subject to certain limited exceptions. These LECs are required to file tariffs covering the terms and conditions of their expanded interconnection offerings. This submission to OMB only addresses the filing of the density pricing plans. The density pricing plan information will be used by the FCC staff to ensure that the tariff rates to be paid by the interconnectors for expanded interconnection services are just, reasonable, and nondiscriminatory as required by the Communications Act of 1934, as amended. The density pricing plans are to be filed whenever a LEC voluntarily elects to implement additional special access pricing flexibility. The filing of density pricing plans is necessary to allow review of the number of zones and how offices were assigned to the different zones. The Commission must approve the density pricing plans in advance of the LEC filing tariff changes implementing the measures in order to ensure that the plans are reasonable.

OMB Number: 3060-0298

Title: Part 61—Tariffs (Other than Tariff Review Plan)—Transport Rate

Structure and Pricing, CC Docket No. 91-213 and Expanded Interconnection with Local Telephone Company Facilities, Report and Order, CC Docket No. 91-141

Action: Revision to a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: On occasion reporting

Estimated Annual Burden: 2,808 responses; 262.03 hours average burden per response; 735,774 hours total annual burden

Needs and Uses: In the attached Report and Order and Further Notice of Proposed Rulemaking in the Transport Rate Structure and Pricing proceeding, CC Docket No. 91-213, The Commission adopts interim rate structure and pricing rules to govern local exchange carrier (LEC) charges for two years. The Commission also seeks comment on what long-term rate structure and pricing plan would be most reasonable in an increasingly competitive access environment. The Commission established three goals in this proceeding: (1) Encouraging efficient use of transport facilities by allowing pricing that reflects costs; (2) adopting a rate structure conducive to full and fair interexchange competition; and (3) avoiding interference with the development of interstate access competition. In the attached Report and Order and Notice of Proposed Rulemaking in the Expanded Interconnection with Local Telephone Company Facilities proceeding, CC Docket No. 91-141, the Commission required Tier 1 LECs, except for Puerto Rico Telephone Company, to provide expanded opportunities for third-party interconnection with their interstate special access facilities. The Commission concluded that expanded interconnection will likely increase competition. Increased competition, in turn, will produce significant benefits for consumers that will outweigh any potential drawbacks. Some of the expected benefits of expanded interconnection include: increased customer choice; greater incentives for improved service quality and responsiveness to customers; greater incentives for telephone companies and other providers to improve operational efficiency; more rapid deployment of new technologies; reductions in rates for services subject to competition toward cost; and increased opportunities for customers to obtain diversity routed, redundant facilities. Increased competition in the provision of long distance service and customer premises

equipment led to similar benefits in the past.

Federal Communications Commission.

William F. Caton,

Assistant Secretary

[FR Doc. 92-28786 Filed 11-25-92; 8:45 am]

BILLING CODE 6712-01-M

Network Reliability Council Meeting

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the fifth meeting of the Network Reliability Council ("Council"), which will be held at the Federal Communications Commission in Washington, DC.

DATES: Tuesday, December 15, 1992 at 2 p.m.

ADDRESSES: Federal Communications Commission, room 856, 1919 M Street NW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic and consumer organizations to explore and recommend measures that would enhance network reliability.

The agenda for the fifth meeting is as follows. Final recommendations of the Threshold Reporting Group and the Fiber Cable Cuts Working Group will be presented for Council consideration. Reports on the Mutual Aid and Restoration Compendium and an outage resulting from flooding in Fairfax, South Carolina will also be presented. The Council may also address other issues. After determining the next meeting date, the Council will adjourn.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to James Keegan, the Council's designated Federal Officer, before the meeting.

For additional information, contact Robert Kimball at (202) 634-1860.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 92-28775 Filed 11-25-92; 8:45 am]

BILLING CODE 6712-01-M

[DA 92-1570]

Waivers of Section 90.621(b) of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Order states that the Private Radio Bureau has found that it is in the public interest to temporarily suspend granting waivers of section 90.621(b) of the Commission's rules for applicants in the specialized mobile radio service.

EFFECTIVE DATE: November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Waivers of Section 90.621(b) of the Commission's Rules for Applicants in the Specialized Mobile Radio Service.

Adopted: November 13, 1992

Released: November 16, 1992

By the Chief, Private Radio Bureau:

1. On July 19, 1991, the Commission adopted rules to permit applicants for Specialized Mobile Radio (SMR) stations to locate their base station transmitters closer than the standard co-channel mileage separation distances (this is commonly referred to as "short-spacing").¹ The Order in PR Docket No. 90-34 codified two methods of short-spacing SMR facilities. The first method is referred to as "consensual short-spacing" and permits an applicant to short-space by submitting written consent from all co-channel licensees located less than 70 miles from the coordinates of the proposed facilities. The second method is short-spacing in accordance with a short-spacing table in section 90.621(b)(4) of the Rules, 47 CFR 90.621(b)(4). The separation distances in the short-spacing table were calculated using 40/22 dBu criteria. Although this 40/22 dBu standard was used to calculate distances for the short-spacing table, the Order also clarified that a 40/30 dBu standard was used to calculate the normal separation distance and that the 40/30 dBu standard continues to be the standard under which short-spacing waiver requests would be evaluated. On August 4, 1992, the Commission adopted a Memorandum Opinion and Order in PR Docket No. 90-34 affirming its previous Order.²

2. Recently, we have received numerous waiver requests to short-space SMR facilities, some of which are based on the 40/30 dBu criteria and some of which are based on the 40/22 dBu criteria.³ Many of these waiver

requests, particularly those based on the 40/30 dBu criteria, have been opposed by existing affected licensees that claim that unacceptable interference will be caused to their facilities. The Commission must evaluate each of these requests for waiver individually and, in instances where a showing is disputed, several engineering showings must often be evaluated. Such extensive evaluation is a time consuming process and strains the Commission's scarce resources.

3. In addition, Motorola, Inc. (Motorola), on October 21, 1992, filed a Petition for Partial Further Reconsideration of the Memorandum Opinion and Order in PR Docket No. 90-34. Motorola raises a number of questions on the issue of what criteria should be used to provide sufficient co-channel protection to SMR facilities and requests that we defer action on any waiver requests that are based on the 40/30 dBu standard while this issue is being considered. Also of concern, the Commission has pending before it several petitions to modify the general licensing procedures for the 800 MHz spectrum, including a petition filed by the National Association of Business and Educational Radio, Inc. proposing to change the co-channel criteria used to license facilities using Business and General Category channels from 40/30 dBu to 40/22 dBu.⁴ The number of disputed waiver requests along with the questions raised in these petitions have lead us to conclude that the issue of adequate co-channel protection for 800 MHz facilities can only be addressed in the context of a comprehensive rule making proceeding.

4. For the reasons discussed above, we find that it is in the public interest to refrain from granting any requests for waiver of Section 90.621(b) of the Commission's rules until the issues raised regarding sufficient co-channel protection can be resolved in a rule making proceeding.⁵ Any applications received after the adoption date of this Order requesting waiver of Section 90.621(b) will be returned without action. We shall, however, evaluate requests for waiver of Section 90.621(b) that have been filed with the Commission prior to the adoption date of this Order.

5. As discussed above, it is hereby ordered that, effective 12:01 a.m. EST the day after the adoption date of this Order and until otherwise notified, applications received that request a waiver of section 90.621(b) of the Commission's rules will be returned without action.

6. For further information concerning this Order, contact Steve Sharkey, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

the short-spacing table, but instead are based on the actual facilities of existing and proposed stations.

⁴ See, RM-8028, RM-8029, RM-8030, Public Notice Report No. 1899, released July 13, 1992. See also, Petition for Rule Making filed October 26, 1992, by the American Mobile Telecommunications Association, Inc.

⁵ The grant of waivers by the Commission is discretionary in nature. See *WAIT Radio v. FCC*, 418 F.2d 1153 (DC Cir. 1969).

¹ Report and Order, PR Docket No. 90-34, 6 FCC 4929 (1991).

² Memorandum Opinion and Order, PR Docket No. 90-34, 7 FCC Rcd 6069 (1992).

³ Those waiver requests that are premised on non-overlap of the 40/22 dBu contours do not reference

Federal Communications Commission
 Ralph A. Haller,
Chief, Private Radio Bureau.
 [FR Doc. 92-28780 Filed 11-25-92; 8:45 am]
 BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Emergency Management Agency Advisory Board; Meeting

AGENCY: Federal Emergency
 Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 1, FEMA announces the following committee meeting, portions of which will be closed:

Name: Federal Emergency Management Agency Advisory Board (FAB).

Dates of Meeting: December 1-2, 1992.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW., Washington, DC 20472.

Time: December 1, 1992, 9 a.m.-5 p.m., December 2, 1992, 9 a.m.-5 p.m.

Proposed Agenda: December 1, 1992—General update on programs and issues concerning FEMA; reports by FAB members.

December 2, 1992—Discussion of programs, including the status of the budget and operating plan; the strategic planning process; reports by FAB members.

SUPPLEMENTARY INFORMATION: Members will be brought current on programs and issues concerning FEMA. Senior FEMA executives will discuss FEMA programs, including the status of the budget and the strategic planning process. Board members will present reports on both days. The Board's advice will be solicited on the future direction of FEMA.

Scheduling of the FAB meeting was limited in part by the availability of certain information to be discussed. Because of such limitations, less than 15 days' notice of the meeting is given, under 41 CFR 101-6.1015(b)(2).

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Dirk Vande Beek, Office of the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3923, on or before November 30, 1992.

The Director has determined that portions of the Board meeting may have to be closed to the public under section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., and section 3(a) of

the Administrative Procedure Act, 5 U.S.C. 552b(c), because discussions may involve information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. Information may be discussed that is predecisional, and to allow the meeting to be open would frustrate frank and open discussion. In addition, some of the discussion may relate solely to the internal rules and practices of FEMA.

Minutes of the meeting (minus those portions of the meeting which may be closed to the public) will be prepared and will be available for public viewing in the Office of the Director, Federal Emergency Management Agency, room 828, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 60 days after the meeting.

Dated: November 19, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92-28777 Filed 11-25-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Chambers Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 21, 1992.

A. Federal Reserve Bank of St. Louis
 (Randall C. Sumner, Vice President) 411
 Locust Street, St. Louis, Missouri 63166:

1. *Chambers Bancshares, Inc.*,
 Danville, Arkansas; to acquire at least 88.85 percent of the voting shares of Scott County Bank, Waldron, Arkansas, and at least 68.80 percent of the voting shares of Bank of Amity, Amity, Arkansas.

2. *First National Bank of Berryville Employee Stock Ownership Trust*,
 Berryville, Arkansas; to become a bank holding company by acquiring at least 30.0 percent, but not more than 33.0 percent, of the voting shares of First National Bank of Berryville, Berryville, Arkansas.

B. Federal Reserve Bank of Kansas City
 (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company of Colorado Employee Stock Ownership Plan*, Lakewood, Colorado, to become a bank holding company, and FirstBank Holding Company of Colorado, Lakewood, Colorado, to merge with FirstBank Holding Company of California, Lakewood, Colorado, and thereby indirectly acquire FirstBank of Palm Desert, N.A., Palm Desert, California.

Board of Governors of the Federal Reserve System, November 20, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-28762 Filed 11-25-92; 8:45 am]

BILLING CODE 6210-01-F

Southern Bank Group, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1992.

A. Federal Reserve Bank of Atlanta
(Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Southern Bank Group, Inc.*, Roswell, Georgia; to engage *de novo* in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the State of Georgia.

Board of Governors of the Federal Reserve System, November 20, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-28761 Filed 11-25-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Allotment Percentages for Child Welfare Services State Grants

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Biennial publication of allotment percentages for States under the title IV-B Child Welfare Services State Grants program.

SUMMARY: As required by section 421(c) of the Social Security Act (42 U.S.C. 621(c)), the Department is publishing the allotment percentage for each State under the title IV-B Child Welfare Services State Grants Program. Under section 421(a), the allotment percentages

are one of the factors used in the computation of the Federal grants awarded under the program.

DATES: Effective for fiscal years 1994 and 1995.

FOR FURTHER INFORMATION CONTACT: Bob Walters, Family Support Branch, Division of Formula, Entitlement and Block Grants, Office of Financial Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington DC 20447.

SUPPLEMENTARY INFORMATION: The allotment percentage for each State is determined on the basis of paragraphs (b) and (c) of section 421 of the Act. The allotment percentage for each State is as follows:

State	Allotment percentage
Alabama.....	60.02
Alaska.....	44.37
Arizona.....	56.47
Arkansas.....	62.33
California.....	44.86
Colorado.....	49.61
Connecticut.....	31.48
Delaware.....	45.16
District of Columbia.....	37.19
Florida.....	49.87
Georgia.....	54.34
Hawaii.....	45.40
Idaho.....	59.80
Illinois.....	45.60
Indiana.....	54.96
Iowa.....	54.86
Kansas.....	52.58
Kentucky.....	59.80
Louisiana.....	61.62
Maine.....	54.03
Maryland.....	41.42
Massachusetts.....	39.26
Michigan.....	50.76
Minnesota.....	49.80
Mississippi.....	65.72
Missouri.....	53.24
Montana.....	59.89
Nebraska.....	54.04
Nevada.....	47.46
New Hampshire.....	42.99
New Jersey.....	32.68
New Mexico.....	62.12
New York.....	41.01
North Carolina.....	55.99
North Dakota.....	59.95
Ohio.....	53.35
Oklahoma.....	59.44
Oregon.....	54.13
Pennsylvania.....	49.78
Rhode Island.....	49.37
South Carolina.....	59.91
South Dakota.....	58.84
Tennessee.....	57.28
Texas.....	55.39
Utah.....	62.25
Vermont.....	52.60
Virginia.....	46.99
Washington.....	49.58
West Virginia.....	63.27
Wisconsin.....	53.14
Wyoming.....	56.30
American Samoa.....	70.00
Guam.....	70.00
Northern Mariana Isls.....	70.00
Puerto Rico.....	70.00
Virgin Islands.....	70.00

Dated: November 18, 1992.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 92-28723 Filed 11-25-92; 8:45 am]

BILLING CODE 4130-01-M

Administration on Developmental Disabilities; Meeting of the Interagency Committee on Developmental Disabilities

AGENCY: Administration for Children and Families (ACF), DHHS.

ACTION: Notice of meeting.

SUMMARY: The Interagency Committee on Developmental Disabilities (ICDD) was established in 1984 by section 108(b) of the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (42 U.S.C. 6007(b)) to "meet regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." In 1990, the Act was amended to provide that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register**. Under section 107(c)(1)(E) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6006(c)(1)(E)), the Secretary must annually report on "the accomplishments of the interagency committee in comparison to the goals and objectives of such committee." The ICDD is chaired by the Assistant Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

MISSION AND GOALS: The mission of the ICDD is to promote the collaboration of appropriate Federal departments and agencies to improve the effectiveness of Federal programs in assisting persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community and in such other ways that assist people with developmental disabilities to attain a more normalized and higher quality of life.

The ICDD has adopted the following goals:

- To exchange information on Federal activities that affect people with developmental disabilities so that each agency is able to utilize this information in managing and directing its programs;
- To identify the needs of people with developmental disabilities and barriers to achieving the goals of the Developmental Disabilities Act and to

recommend solutions for meeting these needs and removing these barriers.

- To establish coordinated planning, when appropriate, for activities that are complementary or similar;

- To stimulate joint activities (e.g., joint research, joint development of policies and regulations, joint demonstration or evaluation projects) among the affected Federal agencies.

The ICDD meets regularly on the first Tuesday in December, April and August. The meeting is open to the public.

DATES: Tuesday, December 1, from 9:30 a.m. to 11:30 a.m.

ADDRESSES: Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: John Pride, room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201 (202) 690-6989 or Wendell Johnson, room 3127, Mary E. Switzer Building, 230 C Street, SW. Washington, DC 20202 (202) 205-9674.

SUPPLEMENTARY INFORMATION: At the meeting the ICDD will discuss:

- (1) Barriers to competitive employment of individuals with disabilities.

- (2) Planned Federal efforts to coordinate the fiscal and management audit functions of all agencies changed with monitoring Protection and Advocacy systems.

- (3) Discussion of the process for identifying areas for possible interagency action in order to resolve coordination issues; and other matters that may arise. If sign language interpreting is needed, please notify John Pride by November 27, 1992.

Dated: October 30, 1992.

Deborah L. McFadden,
*Commissioner, Administration on
Developmental Disabilities.*

[FR Doc. 92-28724 Filed 11-25-92; 8:45 am]

BILLING CODE 4130-01-M

Food and Drug Administration

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Philadelphia District Office, chaired by Loren Y. Johnson, District Director. The topics to be discussed are

food labeling and an update on recent FDA activities.

DATES: Tuesday, December 1, 1992, 10 a.m. to 12 m.

ADDRESSES: Food and Drug Administration, U.S. Customhouse, rm. 1001, Second & Chestnut Sts., Philadelphia, PA 19106.

FOR FURTHER INFORMATION CONTACT: Theresa A. Holmes, Public Affairs Specialist, Food and Drug Administration, U.S. Customhouse, rm. 900, Second & Chestnut Sts., Philadelphia, PA 19106, 215-597-0837.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 19, 1992.

Michael R. Taylor,
Deputy Commissioner for Policy.

[FR Doc. 92-28764 Filed 11-25-92; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

[OACT-042-N]

RIN 0938-AF94

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 1993 under Medicare's hospital insurance program (Medicare Part A). The Medicare statute specifies the formulae to be used to determine these amounts.

The inpatient hospital deductible will be \$676. The daily coinsurance amounts will be:

- (a) \$169 for the 61st through 90th days of hospitalization in a benefit period;
- (b) \$338 for lifetime reserve days; and
- (c) \$84.50 for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: This notice is effective on January 1, 1993.

FOR FURTHER INFORMATION CONTACT: John Wandishin, (410) 966-6389. For

case mix analysis only: Gregory J. Savord, (410) 966-6384.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires the Secretary to determine and publish between September 1 and September 15 of every year the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 1993

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act). This estimate is used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding calendar year and adjusted to reflect real case mix. The adjustment to reflect real case mix is determined on the basis of the most recent case mix data available. The amount determined under this formula is rounded to the nearest multiple of \$4 (or, if midway between two multiples of \$4, to the next higher multiple of \$4).

For FY 1993, section 1886(b)(3)(B)(i)(VIII) of the Act, as amended by section 4002 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, enacted on November 5, 1990), provides that the applicable percentage increase for urban prospective payment system hospitals is the market basket percentage increase minus 1.55 percent, and the applicable percentage increase for rural prospective payment system hospitals is the market basket percentage increase minus 0.55 percent. Section 1886(b)(3)(B)(ii)(IV) provides that the applicable percentage increase for hospitals excluded from the prospective payment system is the

market basket percentage increase. The market basket percentage increases for FY 1993 are 4.1 percent for prospective payment system hospitals and 4.2 percent for hospitals excluded from the prospective payment system, as announced in the **Federal Register** on September 1, 1992 (57 FR 39746). Therefore, the percentage increases for Medicare prospective payment rates are 2.55 percent for urban hospitals and 3.55 percent for rural hospitals; the payment percentage increase for hospitals excluded from the prospective payment system is 4.2 percent. Thus, weighting these percentages in accordance with payment volume, the Secretary's best estimate of the payment-weighted average of the increases in the payment rates for FY 1993 is 2.73 percent. We recognize that Congress has frequently revised the payment rate increase provisions found in section 1886(b)(3)(B) of the Act during the budget reconciliation process, subsequent to the determination and promulgation of the deductible. Such revisions may occur this year as well and any affect the FY 1993 payment rate increase. However, at the time of this determination, we must use the payment rate increase specified in current law to determine the 1993 deductible.

To develop the adjustment for real case mix, an average case mix was first calculated for each hospital that reflects the relative costliness of that hospital's mix of cases compared to that of other hospitals. We then computed the increase in average case mix for hospitals paid under the Medicare prospective payment system in FY 1992 compared to FY 1991. (Hospitals excluded from the prospective payment system were excluded from this calculation since their payments are based on reasonable costs and are affected only by real increases in case mix.) We used bills from prospective payment hospitals received in HCFA as of the end of July 1992. These bills represent a total of about 7.8 million discharges for FY 1992 and provide the most recent case mix data available at this time. Based on these bills, the increase in average case mix in FY 1992 is 1.19 percent. Based on past experience, we expect overall case mix to increase beyond 1.19 percent as the year progresses and more FY 1992 data become available.

Section 1813 of the Act requires that the inpatient hospital deductible be increased only by that portion of the case mix increase that is determined to be real. We estimate that the increase in real case mix is about 1 percent. Since real case mix has been increasing at

about 1 percent per year over the last few years, we expect that this trend will continue. Consequently, we will continue to use our estimate of 1 percent for the real case mix increase.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 2.73 percent, and the real case mix adjustment factor for the deductible is 1 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 1993 is \$676. This deductible amount is determined by multiplying \$652 (the inpatient hospital deductible for 1992) by the payment rate increase of 1.0273 multiplied by the increase in real case mix of 1.01 which equals \$676.50 and is rounded to \$676.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for 1993

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 1993, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th days of hospitalization in a benefit period will be \$169 ($\frac{1}{4}$ of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be \$338 ($\frac{1}{2}$ of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period will be \$84.50 ($\frac{1}{4}$ of the inpatient hospital deductible).

IV. Cost to Beneficiaries

We estimate that in 1993 there will be about 8.4 million deductibles paid at \$676 each, about 3.2 million days subject to coinsurance at \$169 per day (for hospital days 61 through 90), about 1.3 million lifetime reserve days subject to coinsurance at \$338 per day, and about 15.2 million extended care days subject to coinsurance at \$84.50 per day. Similarly, we estimate that in 1992 there will be about 8.2 million deductibles paid at \$652 each, about 3.1 million days subject to coinsurance at \$163 per day (for hospital days 61 through 90), about 1.3 million lifetime reserve days subject to coinsurance at \$326 per day, and about 14.8 million extended care days subject to coinsurance at \$81.50 per day. Therefore, the estimated total increase

in cost to beneficiaries is about \$460 million (rounded to the nearest \$10 million), due to (1) the increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

Authority: Section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2)). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 2, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: November 16, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-28717 Filed 11-25-92; 8:45 am]

BILLING CODE 4120-01-M

[OPA-005-N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for December 14, 1992 from 9 a.m. until 5 p.m. e.s.t. Additional meetings are tentatively scheduled for March 1, June 7, September 13, and December 13, 1993.

ADDRESSES: The meeting will be held in room 800, 8th Floor of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Matthew Crow, Executive Director, Practicing Physicians Advisory Council, Room 425-H, Hubert H. Humphrey Building, 200 Independence Avenue,

SW., Washington, DC 20201, (202) 690-6616.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, enacted on November 5, 1990), to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration (HCFA) not later than December 31st of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Advisory Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Advisory Committee by appropriate action before the end of the 2-year term.

The current members are: Gary Dennis, M.D., Harvey Hanlen, D.O., Kenneth Hansen, M.D., Isabel Hoverman, M.D., Ramon Jimenez, M.D., Jerilyn Kaibel, D.O., William Kirsch, D.O., Marie Kuffner, M.D., David Massanari, M.D., Kenton Moss, M.D., Susan Owens, M.D., Isadore Rosenfeld, M.D., Richard Tompkins, M.D., James Waites, M.D., and Gary Yordy, M.D. The chairperson is Richard Tompkins, M.D.

The Council will discuss the new set of codes for evaluation and management services. This new set of codes was introduced in January of 1992 in the most recent version of the Physicians' Current Procedural Terminology (CPT) 1992. Physicians must use these CPT codes when billing for Medicare services to report evaluation and

management services provided in the physician's office or in an outpatient or other ambulatory facility. Physicians have been using these new codes since January 1, 1992, but questions still remain about the medical record documentation necessary to support the code selected for the various levels of evaluation and management services. We will present to the council, for comment, draft guidelines which address these medical record documentation requirements.

Additionally, if time permits, the Council will be briefed on the refinement of the relative value scale fee schedule under section 1848 of the Social Security Act that was effective January 1, 1992.

Those individuals or organizations who wish to make 10-minute oral presentations on the new set of CPT codes for evaluation and management services must contact the Executive Director to be scheduled. For the name, address and telephone number of the Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. A written copy of the oral remarks must be presented to the Executive Director at the time of the presentation. Anyone who is not scheduled to speak may submit written comments to the Executive Director. The meeting is open to the public but attendance is limited to the space available on a first-come basis.

Authority: Section 1868 of the Social Security Act (41 U.S.C. 1395ee) and section 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, section 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 17, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92-28778 Filed 11-25-92; 8:45 am]

BILLING CODE 4120-01-M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Program Announcement Cancellation

The Center for Substance Abuse Prevention of the Substance Abuse and Mental Health Services Administration (SAMHSA) is withdrawing the grant program announcement entitled, "Demonstration Grants for the Prevention of Alcohol and Other Drug Abuse Among High Risk Youth"—

published in the **Federal Register** on March 1, 1991.

That program announcement was issued by the Office for Substance Abuse Prevention (OSAP) of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). Under the provisions of the ADAMHA Reorganization Act (Pub. L. 102-321), effective October 1, 1992, OSAP became the Center for Substance Abuse Prevention (CSAP) within the newly created SAMHSA which, among other things, will administer the mental health and alcohol and other drug abuse prevention and treatment programs previously administered within ADAMHA.

CSAP, as the successor in interest to OSAP, will now administer substance abuse prevention demonstration grant programs addressed to high risk youth. However, CSAP is hereby withdrawing the program announcement published on March 1, 1991. In order to make several revisions in program emphasis to address requirements in the new legislation, CSAP plans to issue a new program announcement shortly which will address the needs of high risk youth. It is presently anticipated that applications will be due under the new announcement in May 1993.

Accordingly, no applications will be accepted for the canceled program for its next scheduled receipt date of January 20, 1993, or any later date. Those who had anticipated applying are invited to consider applying for assistance when the revised program is announced later as a notice in the **Federal Register**.

Richard T. Kopanda,

Acting Associate Administrator for Management, Substance Abuse and Mental Health Services Administration.

[FR Doc. 92-28765 Filed 11-25-92; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 92N-0440]

Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, in accordance with sections 2(b)(2) and 3(b)(2) of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) to the Federal Food, Drug, and Cosmetic Act (the act), certain

portions of the regulations that it proposed on November 27, 1991 (56 FR 60366 through 60878) and July 20, 1992 (57 FR 32058) to implement sections 403(q) and 403(r) of the act in accordance with sections 2 and 3 of the 1990 amendments are now considered final regulations. FDA is also announcing that, in accordance with section 6(b)(3)(D) of the 1990 amendments, the proposed lists of certain misbranding sections of the act that are and are not being adequately implemented by FDA's regulations that FDA issued pursuant to section 6 of the 1990 amendments have also become final by operation of law.

DATES: The final regulations implementing sections 403(q) and 403(r) of the act will become effective on May 10, 1993. The final lists are effective on November 27, 1992.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFF-200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, President Bush signed into law the 1990 amendments to the act. Sections 2, 3, and 6 of the 1990 amendments establish a procedure under which FDA is given 24 months from the date of their enactment to promulgate final rules implementing those sections. Pursuant to those procedures, FDA published proposals on November 27, 1991 (56 FR 60366 through 60878), and July 28, 1992 (57 FR 33263).

Sections 2(b)(2) and 3(b)(2) of the 1990 amendments provide that, if final rules to implement sections 403(q) and 403(r) of the act, respectively, are not promulgated by November 8, 1992, then the regulations proposed to implement these sections are to be considered as final regulations.

The 24-month period established by the 1990 amendments expired on Sunday, November 8, 1992. Therefore, FDA is issuing this document announcing that the regulations that it proposed in November 1991 are now considered final regulations by operation of law.

The 1990 amendments state that FDA is to promptly publish notice of the new status of the proposed regulations in the *Federal Register*. This notice is issued in response to that requirement. The same reasoning and results apply to the proposed lists issued under section 6(b) of the 1990 amendments.

The agency notes that this document is part of a separate rulemaking

contemplated by Congress if the final regulations were not issued by November 8, 1992. It bears a separate docket number from those assigned to the November 1991 and July 1992 rulemakings to distinguish it from those rulemakings, which are ongoing. The agency intends to issue regulations in the near future that will supersede the regulations that are considered final by operation of law. FDA intends to issue final regulations based on the comments it received in the November 1991 and July 1992 rulemakings or, in its discretion, the agency may decide to issue new proposed rules and solicit additional public comment.

II. Dietary Supplements

The proposed regulations included provisions that address the nutrition labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances; that establish a standard for determining the scientific validity of health claims for substances contained in dietary supplements; and that provide for the regulation of the labeling of these products in several other respects.

The Dietary Supplement Act of 1992 (the Dietary Supplement Act) was recently enacted. This law states that the Secretary of Health and Human Services (and by delegation, FDA) may not implement the 1990 amendments earlier than December 15, 1993, with respect to dietary supplements as they are defined in the Dietary Supplement Act. The Dietary Supplement Act specifically exempts the proposed regulations applicable to dietary supplements from the effects of sections 2(b)(2) and 3(b)(2) of the 1990 amendments until December 31, 1993. Therefore, none of the proposed regulations issued under section 2 or 3 of the 1990 amendments are to be considered final regulations with respect to the labeling of dietary supplements at this time.

The Dietary Supplement Act also provides that regulations that require the use of, or are based upon, the proposed Reference Daily Intakes (RDI's) for vitamins or minerals may not be finalized before November 8, 1993. Because the Dietary Supplement Act superseded the proposed regulations, those portions of the regulations that established RDI's for vitamins or minerals cannot be considered as final regulations until after that date.

Dated: November 24, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-28980 Filed 11-24-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-92-3537]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information:

- (1) The title of the information collection proposal;
- (2) The office of the agency to collect the information;
- (3) The description of the need for the information and its proposed use;
- (4) The agency form number, if applicable;
- (5) What member of the public will be affected by the proposal;
- (6) How frequently information submissions will be required;
- (7) An estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;
- (8) Whether the proposal is new or an extension, reinstatement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Pre-Foreclosure Sale Program Demonstration.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Defaulting mortgagors with stagnant or declining property values can qualify to sell their homes at current fair market value to third-party

buyers. HUD pays the shortfall between sales proceeds and mortgage indebtedness to the mortgagee via the claims process. Mortgagor avoids foreclosure; HUD saves foreclosure, maintenance and marketing costs.

Form Number: HUD—90036, 90037, 90038, 90039, 90041, 90042, 90042 A, 90044, 90045, 90046, 90047, 90048, 90049, 90050, 90051, 90052 and 90054.

Respondents: Individuals or Households, Business or other for profit and non-profit institutions.

Frequency of Submission: Monthly and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collections.....	3149	X	1		5.67	=	17,854

Total Estimated Burden Hours: 17,854.
Status: Revision.

Contact: David Pollack, HUD, (202) 708-1234. Angela Antonelli, OMB, (202) 395-6880.

Dated: November 5, 1992.

BILLING CODE 4210-01-M

Application to Participate Pre-Foreclosure Sale Program

U. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464(exp.07/31/94)

Public reporting burden for this collection of information is estimated to average .67 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0464), Washington, D.C. 20503. Do not send this completed form to any of these addressees.

Privacy Act Statement. The Department of Housing & Urban Development (HUD) is authorized to collect the information on this form by the U.S. Housing Act of 1937, as amended. The Housing & Community Development Act of 1987, 42 U.S.C 3543 authorizes HUD to collect Social Security Numbers (SSN). The information is being used as a basis to determine whether you meet the preliminary qualifications for the program. The SSN is used as a unique identifier. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Providing the SSN is mandatory. Failure to provide the information could result in rejection of your application.

HUD Office/Coordinator		Control Number	FHA Case Number
Lender's Name & Address		Phone Number	Contact Person
Homeowner's Name		Social Security Number	
Homeowner's Name		Social Security Number	
Phone (include area code) (daytime)	Property Address		Mailing Address (if different)
(evenings)			
Does owner(s) occupy home?	Purchase price \$	Date home was purchased	Last full mortgage payment (date)

In the space below, please describe briefly the situation which led to your inability to meet your mortgage obligation (that is, the reason[s] for your default).

<input type="checkbox"/> Yes	Have you spoken to a HUD-approved housing counseling agency about your options in dealing with your mortgage payment problems and your overall financial situation?	How did you hear about the Pre-Foreclosure Sale Program? (mark one)
<input type="checkbox"/> No		
<input type="checkbox"/> Yes	As a result of this mortgage default, have you applied for HUD's Mortgage Assignment Program?	<input type="checkbox"/> A form letter sent to you
<input type="checkbox"/> No		<input type="checkbox"/> Information from housing counseling agency
<input type="checkbox"/> Yes	If you are still eligible to do so, do you intend to apply for assignment of your mortgage?	<input type="checkbox"/> Information from your lender
<input type="checkbox"/> No		<input type="checkbox"/> Information from Department of HUD
		<input type="checkbox"/> Other source. (Specify)

If there are any second liens or other encumbrances (such as home equity loans, mechanics liens, unpaid water or sewer assessments) on the property you would like to sell under the Pre-foreclosure sale program, please identify them and the approximate amounts. Also, describe any title problems that may exist. (Use additional sheets if necessary.)

By signing this application form, you certify that the information provided in this application is true and correct as of the date set forth opposite your signature(s), and acknowledge that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability or criminal penalties. In addition, you are authorizing the Department of HUD or its agent to obtain information regarding your mortgage debt from your lender. If you are found eligible to participate in the Pre-foreclosure Sale program, HUD will arrange for an appraisal of your home. This information is necessary so that HUD can determine the difference, if any, between what your home is now worth and what you presently owe on the mortgage. There will be no cost to you for the appraisal.

Homeowner's Signature & Date	Homeowner's Signature & Date
------------------------------	------------------------------

form HUD-90036 (10/92)

**Waiver of Right to Apply for
Assignment of Mortgage
Pre-Foreclosure Sale Program**

U. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No.2502-0464 (exp.07/31/94)

Public reporting burden for this collection of information is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0464), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

FHA Case Number

The Pre-foreclosure Sale program is an option for which you may qualify if you meet certain criteria. It is a separate program from other procedures that you might choose to follow in order to keep your home and avoid foreclosure of your mortgage.

One of these other procedures is known as the Mortgage Assignment Program. Every homeowner with an FHA-insured mortgage has the right to apply for assignment of their mortgage to HUD at a time when they have fallen at least three mortgage payments behind. To be accepted into the Assignment program, applicants must document that their mortgage default was caused by circumstances beyond their control, and that there is also a reasonable prospect that they will be able to resume making their regular mortgage payments within 36 months of entering the program. HUD takes over the mortgage and becomes the new "lender" for people who are accepted.

Before a homeowner can be considered for the Pre-foreclosure Sale program, he or she must either waive the right to apply for mortgage assignment, or have been turned down for assignment by HUD. If you are not sure whether you want to give up the right to apply for mortgage assignment, or if you have other questions about how the Assignment Program works, do not sign this waiver. Contact a HUD-approved Housing Counseling Agency or your local HUD Office before making a commitment to a particular method of dealing with your mortgage or financial problems.

Waiver

This will certify that the undersigned homeowner(s) agree(s) to waive (give up) the right to apply to the Department of HUD for assignment of the mortgage identified by the FHA Case Number above. This decision has been made freely and after consideration of the available alternatives that might help in avoiding foreclosure and/or retaining ownership of the mortgaged property.

Print Name

Print Name

Homeowner's Signature & Date

Homeowner's Signature & Date

X

X

Homeownership Counseling Certification Pre-Foreclosure Sale Program

U. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp.07/31/94)

Public reporting burden for this collection of information is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Reports Management Officer, Office of Information Policies and Systems, U. S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0464), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Every participant in the Pre-foreclosure Sale (PFS) program must sign a certification that he or she has received appropriate homeownership counseling before a proposed pre-foreclosure sale transaction can be approved. By signing this form, a participant certifies that he or she has received information regarding options and alternatives that they may be entitled to, or which may be available to them -- other than the sale of their property to a third party -- to avoid foreclosure. It is important that the homeowner make an informed decision about whether to enter into the PFS program. Finally, a participant must understand that the pre-foreclosure sale must be an "arm's length" transaction -- the buyer cannot be a family member, business associate or other "favored party," and the broker cannot share a business interest with the PFS program coordinator. No hidden terms or special understandings can exist between seller or buyer and the sales agent or program coordinator.

Certification: This will certify that the undersigned homeowner has received homeownership counseling from a housing counseling agency approved by the Department of Housing and Urban Development (HUD). The counseling included a description of the available rights and options at the time the counseling was provided. The intent of the counseling has been to encourage a mortgagor (homeowner) to decide on a particular objective -- in the context of dealing with the mortgage default -- from among the available courses of action. The mortgagor can then follow up on this decision by choosing certain steps intended either to avoid foreclosure and/or to retain possession of the property. If a pre-foreclosure sale results, the program requires that it be an "arm's length" transaction -- the buyer cannot be a family member, business associate or other "favored party." No hidden terms or special understandings can exist between seller or buyer and the sales agent or program coordinator. The broker cannot share a business interest with the PFS program coordinator.

Homeowner's Signature & Date

X

Housing Counseling Agency Name

X

Homeowner's Signature & Date

X

Signature & Date of Official

**Property Information
Request**
Pre-Foreclosure Sale Program

U. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp. 07/31/94)

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Lender's Name		Control Number
Account Number:	HUD Office/Coordinator	
Homeowner's Name(s)	Property Address:	
Homeowner's Name(s)		

The subject homeowner(s) applied to participate in HUD's Pre-Foreclosure Sale Program. In order to process their application, it is necessary to perform an "as-is" appraisal of the mortgaged property. **Please forward a copy of one of the following documents which displays the complete legal description of the property.**

- (A) Original appraisal
- (B) Original form HUD-92800 - Application for Property Appraisal and Commitment
- (C) Other (Specify):

Please provide the following information:

- (1) Appraised value at origination
- (2) Due date of first payment or date of closing

A pre-addressed envelope is enclosed for your convenience.

Signature of Program Coordinator

Date

**Waiver of Customary Minimum
Ratio of Appraised Value to
Outstanding Indebtedness
Pre-Foreclosure Sale Program**

U. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp.07/31/94)

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HUD Office/Coordinator	Control Number	FHA Case Number
Homeowner's Name	Property Address:	
Homeowner's Name		

The subject homeowner's participation in the Pre-foreclosure Sale Program has been delayed due to the fact that the "as-is" appraised value of the property is less than the required 70 percent of the outstanding debt. A copy of the appraisal is attached.

"AS-IS" Appraised Value	Outstanding Debt	Percent of "AS-IS" Appraised Value to outstanding debt
\$	\$	%

Local HUD Office Approval

- ☐ The appraised value of the property is accepted.
Participation in the PFS program is approved.
- ☐ The Local HUD Office declines to waive the criterion governing the
ratio of appraised value to outstanding indebtedness

HUD Office Authorizing Official's Signature & Date

X

form HUD-90041 (10/92)

**U. S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing this collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-8600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0464), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Program Office		Control Number		FHA Case Number
Homeowner Name			Homeowner Name	
Homeowner's Phone Number (include area code) (day) (eve)				
Lender's Name		Contact Person		Phone Number
Date Entered Program	Foreclosure Date	Sales Agent and Phone Number		

Use the following space to record additional information, such as telephone conversations with homeowner, real estate agent, local HUD Office, etc., and any other pertinent facts.

[illegible]

form HUD-90042 (10/92)

**U. S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0464 (Exp. 07/31/94)

Control Number

Homeowner Name _____

Homeowner Name _____

Use the following space to record additional information, such as telephone conversations with homeowner, real estate agent, local HUD Office, etc., and any other pertinent facts.

[illegible]

Instructions to Mortgagee
Pre-Foreclosure Sale Program**U. S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp.07/31/94)

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Mortgagee Name

Date

Program Office

Control Number

Account Number

Homeowner's Name

Homeowner's Name

Property Address

The subject homeowners have been accepted into the Pre-foreclosure Sale Program. In order to facilitate their participation in the program, you are requested to service this mortgage as follows:

☐ Do not schedule the foreclosure sale date before _____☐ Other (Specify)**Extension Request**

It has been determined that it is in HUD's interest to extend the delay of foreclosure activity as indicated below:

☐ Continue delay of foreclosure sale. Do not schedule before _____☐ Other (Specify)

HUD's Authorizing Official Signature & Date

X

**Program Acceptance
Property Sales Information
Pre-Foreclosure Sales Program**

U. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No.2502-0464 (exp.07/31/94)

Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0464), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

HUD Ofc/Coordinator	Control No:	FHA Case Number:
Homeowner Name	Property Address	
Homeowner Name		

Homeowner: Please Read This Information Carefully

Your application to participate in the HUD Pre-foreclosure Sale Program has been accepted. Attached is the completed "as-is" appraisal of your property. This appraisal is good for six months, until _____. (However, the deadline you have to find a qualified buyer will probably be sooner.)

The appraised value of your property is _____ percent of your outstanding mortgage indebtedness.

The appraised value of the property is \$ _____. Program criteria require that "net" sales proceeds should be at least 90 percent of the appraised value, or \$ _____, after deducting certain expenses of the transaction.

Note: HUD Approval is a Pre-Condition of the Sale

You must submit your proposed contract of sale to the program coordinator for approval. The sale must be an "arm's length" transaction - the buyer cannot be a member of your family, business associate, or other favored party. No hidden terms or special understandings can exist between buyer and seller, or between the seller or buyer and the sales agent or program coordinator. If the seller negotiates to pay all or any portion of the discount points or other (buyer's) closing costs as an incentive to a purchaser, they will be considered a personal expense of the seller and cannot be paid from HUD's sales proceeds. Pro-rated real estate taxes must be paid by the seller at closing. Program incentives paid to the seller at closing may be used for these purposes.

Because it is not certain that your participation in this program will culminate in an approved pre-foreclosure sale, your lender is being asked to delay the foreclosure sale date; however, the status of your loan remains "pending foreclosure" while you attempt to sell your home through this program.

Questions concerning this information should be directed to the Program Coordinator at the toll free number: **1-800-800-3088**.

Attachment

**Program Participation
Real Estate Brokers
Pre-Foreclosure Sales Program**

**U. S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp.07/31/94)

Public reporting burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20416-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0464), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

The Department of HUD administers the Pre-foreclosure Sale program, and is ready to assist successful program participants who sell their homes to pay off the remainder of their mortgage debt after the sale. HUD strongly recommends that all program participants retain the services of a real estate broker to help them sell their homes. You may use any broker you wish. If you are not already familiar with brokers doing business in your area, you may want to select one of the brokers listed below. Each has expressed an interest in working with homeowners in the program. This list is being made available for your convenience and is not an official part of HUD's Pre-foreclosure Sale Program.

Real Estate Broker's Name & Address	Telephone Number
	Contact Person
Real Estate Broker's Name & Address	Telephone Number
	Contact Person
Real Estate Broker's Name & Address	Telephone Number
	Contact Person
Real Estate Broker's Name & Address	Telephone Number
	Contact Person
Real Estate Broker's Name & Address	Telephone Number
	Contact Person
Real Estate Broker's Name & Address	Telephone Number
	Contact Person
Real Estate Broker's Name & Address	Telephone Number
	Contact Person
Real Estate Broker's Name & Address	Telephone Number
	Contact Person

The sooner you contact a broker, the sooner they will be able to help you accomplish the sale of your property. For further information, contact the HUD Pre-foreclosure Sale Program at 1-800-800-3088.

Termination of Participation
Pre-Foreclosure Sale ProgramU. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No.2502-0464 (exp.07/31/94)

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Name & Address of Program Participant

FHA Case Number

This is to advise you that your participation in the HUD Pre-Foreclosure Sale Program has been terminated for the following reasons:

- ☐ Failure to put forth a "good faith" effort to sell the property
- ☐ Title search revealed liens and/or other encumbrances which cannot be dissolved. Therefore, HUD cannot permit a pre-foreclosure sale or prevail upon the lender to accept a deed-in-lieu of foreclosure
- ☐ Participant withdrew from the program

Other Comments

Name & Title of HUD's Official

Signature & Date

**Title Search/
Discharge of Lien
Pre-Foreclosure Sales Program****U. S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp. 07/31/94)

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Lender's Name

Account Number

HUD Office/Coordinator

Control No.

Homeowner's Name

Property Address

Homeowner's Name

Part A: Title Search

Title Search performed?

☐ Yes☐ No

If Yes, Date _____

By _____

Liens and Encumbrances Discovered:

Part B: Discharge of Liens

The mortgagee is hereby requested to satisfy the following liens against the property to facilitate the following Pre-foreclosure Sale program activity:

☐ Anticipated sale of the property☐ Acceptance of a deed-in-lieu of foreclosure

Liens and Other Encumbrances:

The Department authorizes mortgagees to negotiate a compromise settlement in resolving liens and encumbrances. Reimbursement will be made through the Single Family Claims for Insurance Benefits.

HUD's Authorizing Official Signature & Date

X

Tendering of Deed
Pre-Foreclosure Sale ProgramU. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp.07/31/94)

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Lender's Name		Account Number
HUD Office/Coordinator		Control Number
Homeowner Name	Property Address	
Homeowner Name		

A "good faith" effort" has been made to sell the subject property prior to foreclosure, but without positive results.

The subect homeowner(s), by affixing the signature(s) below, hereby tenders the deed to the property in lieu of foreclosure.

Homeowner's Name (please type)	Homeowner's Name (please print)
Homeowner's Signature & Date	Homeowner's Signature & Date
X	X
HUD's Authorizing Official Signature & Date	
X	

**Request for Deed-In-Lieu
of Foreclosure
Pre-Foreclosure Sale Program****U. S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp.07/31/94)

Public reporting burden for this collection of information is estimated to average .10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0464), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Lender's Name		Acct. No.
HUD Office/Coordinator		Control No.
Homeowner Name	Property Address	
Homeowner Name		

A "good faith" effort has been made to sell the subject property prior to foreclosure, but without positive results. The homeowner is prepared to tender the deed at the conclusion of his/her participation in the program, which is imminent. HUD strongly recommends that you accept a deed-in-lieu of foreclosure, provided that the mortgagor(s) meet regularly applied criteria for acceptance of a deed-in-lieu (e.g., especially with regard to the existence of liens). The Department's strong recommendation should be considered along with the enclosed signed Tender of Deed form from the homeowner(s).

Under program procedures, HUD authorizes the payment of \$500 to the homeowner as an inducement to tender the deed. This fee is fully reimbursable through the Single Family claims for Insurance Benefits process.

HUD's Authorizing Official's Signature & Date

X

Sales Contract Review
Pre-Foreclosure Sale ProgramU. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp. 07/31/94)

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HUD Office/Coordinator:	Control No.:	FHA Case Number:
Homeowner's Name:	Property Address:	
Homeowner's Name:		

HUD Approval of the Sales Contract is a Pre-Condition of the Sale

Date of Sales Contract	Date Contract Received by HUD:	Sales Agent:		
Offered By:		Address:		
Listing Price:	Price Offered:	Appraised Value:	90% of Appraised Value:	Estimated Net Sales Proceeds:
\$	\$	\$	\$	\$

The Sales Contract offered by the individuals listed above is:

☐ Accepted ☐ Rejected (List reasons below)

This sales contract is rejected for the following reason(s):

Closing Worksheet

Pre-Foreclosure Sale Program

U. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp. 07/31/94)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0464), Washington, D.C. 20503. Do not send this completed form to these addressees.

HUD Office/Coordinator		Control Number		FHA Case Number	
Homeowner's Name			Property Address		
Homeowner's Name					
Name & Address of Lender				Date Enrolled	
				Outstanding Indebtedness	
				\$	
Original Appraised Value		Date of Appraisal		No. of Sales Contracts Submitted	
\$					
Name of Purchaser			Name of Purchaser		
No. of Liens Satisfied		Amount Paid to Lienholders		"As-Is" Appraised Value	
		\$		\$	
				Selling Price	
				\$	
				Percentage of Appraised Value	
				%	
Name of Broker		Sales Commission / Rate		Broker's Signature & Date*	
		\$ / %			
Type of financing: (check one)				Does selling price exceed appraised value?	
<input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> Conventional <input type="checkbox"/> Other				<input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: \$ _____ \$ _____	
				Excess Amount 50% of excess	
Incentives to be Paid to Seller at Closing					
Base incentive: \$ _____		Date of Closing: _____			
(Enter \$1500 or 50% of excess amount, whichever is greater)					
Plus additional amounts (if any): \$ _____		Total Incentives Paid: \$ _____			
Total Incentives: \$ _____					
This certifies that the incentives itemized above were paid to the seller at closing.					
HUD's Authorizing Official's Signature & Date			Closing Agent's Signature & Date		
X			X		

(Attach copy of Settlement Statement)

* By signing, the Broker certifies that there are no hidden terms or special understandings with the buyer, seller, or program coordinator.

form HUD-90052 (10/92)

Monthly Report

Pre-Foreclosure Sale Program

U. S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0464 (exp.07/31/94)

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HUD Office / Coordinator

Date (Month / Year)

New Applicants (Intro Session & Interview) Current Month

New Active Participants Current Month

[For Billing Purposes: \$ _____ X _____ = \$ _____]

[For Billing Purposes: \$ _____ X _____ = \$ _____]

Total Active Participants, End of Previous Month _____

This Month's: # "Exits" _____

P/F Sales _____

[For Billing Purposes: \$ _____ X _____ = \$ _____]

Deeds-in-Lieu _____

[For Billing Purposes: \$ _____ X _____ = \$ _____]

[For Billing Purposes: Total \$ _____]

This Month's Total Terminations: _____

Deduct This Month's Total Terminations. - _____

Add This Month's New Active Participants + _____

Total Active Participants, End of This Month = _____

Cumulative Reporting

	Through Last Month:	This Month	Through This Month:
New Applicants			
"Exits" w/o Pos. Result			
Pre-foreclosure Sales			
Executed Deeds-in-Lieu			

form HUD-90054 (10/92)

[FR Doc. 92-28748 Filed 11-25-92; 8:45 am]

BILLING CODE 4210-01-C

**Office of the Assistant Secretary for
Community Planning and
Development**

[Docket No. N-92-1917; FR-3350-N-07]

**Federal Property Suitable as Facilities
to Assist the Homeless**

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies
unutilized, underutilized, excess, and
surplus Federal property reviewed by
HUD for suitability for possible use to
assist the homeless.

EFFECTIVE DATE: November 27, 1992.

ADDRESSES: For further information,
contact James Forsberg, Department of
Housing and Urban Development, room
7262, 451 Seventh Street SW.,
Washington, DC 20410, telephone (202)
708-4300; TDD number for the hearing-
and speech-impaired (202) 708-2565,
(these telephone numbers are not toll-
free), or call the toll-free Title V
information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In
accordance with the December 12, 1988
court order in *National Coalition for the
Homeless versus Veterans
Administration*, No. 88-2503-OG
(D.D.C.), HUD publishes a Notice, on a
weekly basis, identifying unutilized,
underutilized, excess and surplus
Federal buildings and real property that
HUD has reviewed for suitability for use
to assist the homeless. Today's Notice is
for the purpose of announcing that no
additional properties have been
determined suitable or unsuitable this
week.

Correction: Prop. No. 549220006 was
inadvertently published as suitable/
available. The property is not available—it
has been assigned to HHS for health use
(Portion of Veterans Admin Hospital in
Topeka, KS)

Dated: November 20, 1992.

Paul Roitman Bardack,

*Deputy Assistant Secretary for Economic
Development.*

[FR Doc. 92-28749 Filed 11-25-92; 8:45 am]

BILLING CODE 4210-29-M

**Office of the Assistant Secretary for
Housing-Federal Housing
Commissioner**

[Docket No. N-92-3242; FR-3090-N-02]

**Funding Availability; Housing
Counseling: Announcement of Funding
Awards for FY 1992**

AGENCY: Office of the Assistant
Secretary for Housing—Federal Housing
Commissioner, HUD.

ACTION: Announcement of funding
awards for FY 1992.

SUMMARY: In accordance with section
102(a)(4)(C) of the Department of
Housing and Urban Development
Reform Act of 1989, this announcement
notifies the public of funding decisions
made by the Department under HUD's
Housing Counseling Program for Fiscal
Year 1992. The announcement contains
the names and addresses of the award
winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT:
Thomas Miles, Program Advisor, Single
Family Servicing Division, Department
of Housing and Urban Development,
room 9178, 451 Seventh Street, SW.,
Washington, DC 20410, telephone (202)
708-1672 or (202) 708-4594 (TDD). (These
are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section
106 of the Housing and Urban
Development Act of 1968 (section 106)
authorizes HUD to provide a program of
housing counseling services to
designated homeowners and tenants.
Under the section 106 housing
counseling program, HUD contracts with
public or private organizations to
provide the housing counseling services
authorized by section 106. When the
Congress makes funds available to
assist the housing counseling program,
HUD announces the availability of these
funds, and invites applications from
eligible agencies (i.e. HUD-approved
counseling agencies), through a notice of
funding availability (NOFA) published
in the *Federal Register*.

In a NOFA published on January 15,
1992 [57 FR 1844], HUD announced that
a total amount of \$6,025,000 was
appropriated for section 106 housing
counseling by the HUD Appropriations
Act of 1992. Of the \$6,025,000 available
for housing counseling activities, the
HUD Appropriations Act of 1992
appropriated up to \$350,000 for a
prepurchase counseling and foreclosure

prevention counseling demonstration
program. This program, authorized by
section 577(c) of the National Affordable
Housing Act (Pub. L. 101-625, approved
November 28, 1990) (NAHA), is to be
conducted in three target areas, which
shall not be located in less than two
separate metropolitan areas. This notice
announces the three agencies that will
participate in this program, and the
amount of funds awarded to each
agency.

Of the remaining \$5,675,000, HUD set
aside:

(1) \$225,000 to help resolve two
litigation matters in Texas and Boston
that involve housing counseling;

(2) \$150,000 to continue operation of
the toll-free telephone number (1-800-
733-3238) (authorized by section 577(b)
of NAHA), by which the public may
obtain a list of HUD-approved housing
counseling agencies in their area; and

(3) \$149,510, to provide training for the
Home Equity Conversion Mortgage
(HECM) Program.

After deduction of these additional
amounts, HUD announced the
availability of \$5,150,490 in FY 1992
funds for the counseling activities
authorized by section 106.

In accordance with section
102(a)(4)(C) of the Department of
Housing and Urban Development
Reform Act of 1989, the Department is
published (by Region) the names,
addresses of the HUD-approved
agencies awarded funds under the FY
1992 Housing Counseling NOFA, and the
amount of funds awarded to each
agency. This information is provided in
appendix A to this document.

The total amount of the awards for
counseling activities under section 106
equaled \$5,300,458. The difference
between the amount awarded and the
amount announced as available in the
January 15, 1992 NOFA results from the
fact that HUD did not need the \$150,000
set aside for toll-free telephone number.
Sufficient funds remained for operation
of the toll-free number from the FY 1991
amount authorized for this purpose.
Accordingly, HUD was able to make
available this \$150,000 to HUD-approved
counseling agencies for the counseling
activities authorized by section 106.

Dated: November 20, 1992.

Arthur J. Hill,

*Assistant Secretary for Housing—Federal
Housing Commissioner.*

Appendix A.—Housing Counseling Agencies Receiving Grants For Fiscal Year 1992

Region 1

Central Maine Agency On Aging, Inc., P.O. Box 248, Gardiner, ME 04345.....	\$3,000
Housing Allowance Project, Inc., 322 Main Street, Springfield, MA 01105.....	10,500
Rural Housing Improvement, Inc., P.O. Box 429, Winchendon, MA 01475.....	5,000
City of Lynn, Department of Community Development, City Hall, Room 315, Lynn, MA 01901.....	4,000
Quincy Community Action Programs, Inc., 1509 Hancock St., Quincy, MA 02169.....	4,000
Urban League of Greater New Haven, 1184 Chapel Street, New Haven, CT 06511.....	6,000
Urban League of Greater Hartford, 1229 Albany Ave., Hartford, CT 06112.....	5,000
Consumer Credit Counseling Services of Conn., 151 New Park Avenue, Hartford, CT 06106.....	9,037
Urban League of Rhode Island, 246 Prairie Ave., Providence, RI 02905.....	3,000
Blackstone Valley Comm. Action Program, 129 School Street, Pawtucket, RI 02860.....	2,000
Total.....	51,537

Region 2

Chataqua Opportunities, Inc., 188 S. Erie Street, Mayville, NY 14757.....	5,000
Housing Assistance Center, 1233 Main Street, Buffalo, NY 14209.....	18,659
Housing Development of Orleans County, 53 North Main St., Albion, NY 14411.....	8,750
Community Action in Self Help, 9 Broad Street, Lyon, NY 14489.....	5,000
Housing Council in Monroe County, 242 Andrews Street, Rochester, NY 14604.....	18,659
Middlesex County Econ. Oppor. Corp., 841 Georges Road, 2nd Floor, N Brunswick, NJ 08902.....	8,750
Fair Housing Council of Northern NJ, 131 Main Street, Hackensack, NJ 07601.....	5,000
Catholic Charities, Diocese of Metuchen, 540-550 Route 22 East, Bridgewater, NJ 08807.....	5,000
Urban League of Union County, 272 North Broad St., Elizabeth, NJ 07207.....	5,000
Morris County Fair Housing Council, 19 Market Street, Morristown, NJ 07963.....	15,000
Check-Mate, 550 Cookman Ave., Asbury Park, NJ 07712.....	11,000
Urban League of Essex County, 3 Williams St., Suite 300, Newark, NJ 07102.....	18,659
Paterson Task Force, 155 Ellison Street, Paterson, NJ 07505.....	15,000
The Home Partnership, 450 7th Street, Hoboken, NJ 07030.....	18,659
Cayuga County Homesite Development, 60 Clark Street, Auburn, NY 13021.....	5,000
United Tenants of Albany, 33 Clinton Ave., NY 12207.....	6,125
Dutchess County Office for the Aging, 488 Main Street, Poughkeepsie, NY 12601.....	3,640
Renesselar County Comm. Housing Resource Board, P.O. Box 255, Renesselar, NY 12144.....	7,280
Housing Assistance Program of Essex County, Church Street, Elizabeth, NY 12932.....	6,125
Metro-Interfaith Services, 21 New Street, Binghamton, NY 13903.....	18,659
Consumer Credit Couns. Serv., 120 E. Washington St., 1006 Univ. Bldg., Syracuse, NY 13202.....	8,750
Better Neighborhoods, Inc., 986 Albany St., Schenectady, NY 12307.....	18,659
Troy Rehabilitation and Improvement Program, 415 River St., 3rd Floor, Troy, NY 12180.....	7,280
Albany County Rural Housing Alliance, 34 South Main Street, Voorheesville, NY 12210.....	6,300
Albany Housing Coalition, 278 Clinton Ave., Albany, NY 12210.....	5,000
Cornell Cooperative Extension, 50 West High Street, Ballston, Spa, NY 12020.....	5,000
Orange County Rural Development, 365 Route 211 East, Middletown, NY 10924.....	7,280
Baisley Park Neighbors, 114-02 Guy Brewer Blvd., Jamaica, NY 11434.....	7,280
New York Hispanic Housing Coalition, P.O. Box 880, Stuyvesant Station, New York, NY 10009.....	5,000
Long Island Housing Services, 1747-42A Veterans Memorial Highway, Islandia, NY 11722.....	18,659
Brooklyn Neighborhood Improvement Assoc., 648 Washington Ave., Brooklyn, NY 11238.....	5,000
Family Service League of Suffolk Cnty., 642 New York Ave., Huntington, NY 11743.....	5,000
Family Service Association of Nassau County, 336 Fulton Ave., Hempstead, NY 11550.....	10,000
Jersey Counseling and Development, 1840 South Broadway, Camden, NJ 08104.....	18,659
Atlantic Human Resources, 10 South Tennessee Ave., Atlantic City, NJ 08401.....	4,997
Senior Citizens United Comm. Serv. of Camden County, 146 Blackhorse Pike, Camden, NJ 08059.....	5,000
Test City Child Care, 143 West Broad Street, Bridgeton, NJ 08302.....	1,750
Total.....	344,579

Region 3

Warren-Forest County's Economic Opportunity, P.O. Box 547, Warren, PA 16365.....	4,375
Elder-ado, Inc., 320 Brownsville Road, Pittsburgh, PA 15210.....	3,500
Housing Council of York, 116 N. George Street, York, PA 17401.....	14,525
Urban League of Philadelphia, 4601 Market Street, Suite 2 South, Philadelphia, PA 19139.....	11,375
Housing Opportunities, Inc., 133 7th Street, McKeesport, PA 15134.....	12,250
Commission on Economic Opportunity, 211-213 S. Main Street, Wilkes-Barre, PA 18701.....	4,900
Community Resources for Independence, 2222 Filmore Ave., Erie, PA 16506.....	3,500
Garfield Jubilee Association, 5138 Penn Ave., Pittsburgh, PA 15224.....	3,500
Berks Community Action Program, 227-229 N 5th Street, Reading, PA 19601.....	9,975
Philadelphia Council for Commun. Advan., 100 N. 17th St., Suite 600, Philadelphia, PA 19102.....	28,000
Fayette County Community Action Agency, 137 N. Beeson Ave., Uniontown, PA 15401.....	4,375
Philadelphia Housing Devel., 1234 Market Street, 10th Floor, Philadelphia, PA 19107.....	10,500
Consumer Credit Counseling Services, 3671 Crescent Court E., Whitehall, PA 18052.....	4,900
Booker T. Washington Center, 1720 Holland St., Erie, PA 16503.....	4,375
Northwest Counseling Service, Inc., 5601 N. Broad Street, Philadelphia, PA 19141.....	26,250
Mercer County Community Action Agency, 309 Ohio Street, Sharon, PA 16146.....	3,500
Tenant's Action Group of Philadelphia, 21 South 12th Street, Philadelphia, PA 19107.....	4,375
Allied Human Services Association, Inc., 33-39 S. Jefferson St., New Castle, PA.....	3,500
Shenango Valley Urban League, Inc., 39 Chestnut St., Sharon, PA 16146.....	5,250
Consumer Credit Counseling of Western PA, Inc., 309 Smithfield St., Pittsburgh, PA.....	21,175
The Stop Organization, 415 St. Paul's Blvd., Norfolk, VA 23510.....	15,750
Family Service-Upper Ohio Valley, 51 11th Street, Wheeling, WV 26003.....	8,750
Consumer Credit Counseling Service of Bluefield, P.O. Box 6282, Bluefield, WV 24701.....	5,250
Community Assistance Network, 7701 Dunmanway, Baltimore, MD 21222.....	7,000
Total Action Against Poverty in Roanoke Valley, P.O. Box 2868, Roanoke, VA 24001.....	5,250
Dorchester Community Development Corporation, 435 High Street, Cambridge, MD 21613.....	3,500
Consumer Credit Couns. Serv./Mid Ohio Valley, 2715 Murdoch Ave. B-4, Parkersburg, WV 26101.....	10,500
Consumer Credit Couns. Serv./Kanawha Valley, 8 Capitol St., Suite 200, Charleston, WV 25301.....	7,000
Monticello Area Community Action Agency, 215 East High St., Charlottesville, VA 22901.....	4,375

County Board of Arlington Agency on Aging, 1801 N. George Mason Drive, Arlington, VA 22207.....	3,500
Fairfax County Office of Human Services, 5501 Backlick Road, Suite 110, Springfield, VA 22015.....	7,000
Shore Up, Inc., 520 Snow Hill Road, Salisbury, MD 21803.....	4,375
Sussex County Community Action Agency, 308 N. Railroad Ave., Georgetown, DE 19947.....	4,375
Neighborhood House, 601 New Castle Ave., Wilmington, DE 19801.....	5,250
Hampton Redevelopment and Housing Authority, 22 Lincoln Street, Hampton, VA 23669.....	5,250
Harford County Housing Authority, 15 S. Main Street, Suite 106, Bel Air, MD 21014.....	8,750
Near Northeast Community Improvement Corp., 1326 Florida Ave., NE, Washington, DC 20002.....	5,250
Housing Counseling Services, 2430 Ontario Road, NW., Washington, DC 20009.....	5,250
Cris-Cross, Inc., 115 S. 4th Street, Suite 305, Clarksburg, WV 26302.....	5,250
Richmond Housing Opportunities Made Equal, 1218 W. Cary Street, Richmond, VA 23220.....	21,000
Howard County, Housing and Community Devel., 10650 Hickory Ridge Rd., Columbia, MD 21044.....	4,375
CCCS of Southern West Virginia, Pinecrest Hospital, Room D217, Beckley, WV 25802.....	3,500
United Communities Against Poverty, 1400 Doewood Lane, Capitol Heights, MD 20743.....	14,000
Far SE Community Org., 3100 Martin Luther King Jr. Ave., SE, 205, Washington, DC 20032.....	4,375
Marshall Heights Community Devel. Org., 3917 Minnesota Ave., SE, Washington, DC 20019.....	6,125
Portsmouth Redevelopment and Housing Auth., 339 High St., Portsmouth, VA 23705.....	11,375
St. Ambrose Housing Aid Center, 321 E. 25th St., Baltimore, MD 21218.....	14,000
Urban League of Greater Richmond, 101 East Clay Street, Richmond, VA 23219.....	9,625
Housing Opportunities Commission, 10400 Detrick Ave., Kensington, MD 20895.....	7,000
Prince William Co. Cooperative Extension Serv., 8805 Sudley Rd., Manassas, VA 22110.....	15,750
Baltimore Urban League, 1150 Mondawmin Courthouse, Baltimore, MD 21215.....	6,125
University Legal Services, 300 I Street, NE, Suite 202, Washington, DC 20002.....	14,000
Anne Arundel County Economic Opportunity Committee, P.O. Box 1951, Annapolis, MD 21404.....	14,000
COIL Community Economic Development Corp., 11 S. Carrollton Ave., Baltimore, MD 21223.....	3,500
Community Housing Inc. 613 Washington St, Wilmington, DE 19801.....	5,250
Family Service Inc., 1304 E. 5th Avenue, Huntington, WV 25701.....	5,250
Anne Arundel County Dept. of Aging, 101 Old Solomons Island Road, Annapolis, MD 21401.....	5,250
DC Housing Finance Agency, 1275 K Street NW, Suite 600, Washington, DC 20001.....	5,250
Total.....	475,475

Region 4

Athens-Clarke County Government, 155 E. Washington St., Athens, GA 30603.....	21,070
Atlanta Urban League, 100 Edgewood Avenue, NE, Suite 600, Atlanta, GA 30303.....	2,485
Coastal Georgia Area Community Action Authority, 2801 4th St., Brunswick, GA 31521.....	3,010
Coastal Plain Areas Econ. Oppor. Auth., 2019 Ashley St., Valdosta, GA 31603.....	10,780
DeKalb-Fulton Housing Counseling Center, 4151 Memorial Dr., Suite 107E Decatur, GA 30032.....	88,503
Economic Opportunity for Savannah-Chatham, 618 W. Anderson St., Savannah, GA 31402.....	32,865
Metro Columbus Urban League, 802 First Ave., Columbus, GA 31901.....	9,065
Metro Fair Housing Services, 1063 Austin Ave., NE, Atlanta, GA 30307.....	3,325
Middle Georgia Community Action Agency, 706 Elberta Rd., Warner Robins, GA 31099.....	4,760
Auburn Housing Authority, 931 Booker St., Auburn, AL 36830.....	8,330
Birmingham Urban League, 1717 Forth Ave., North, Birmingham AL 35202.....	15,155
Commun. Action Agency/Calhoun/Cleburne/Cherokee, 1702 Noble St., Anniston, AL 36202.....	20,685
Commun. Action/Huntsville/Madison/Limestone, 4015 Stringfield Rd., Huntsville, AL 35810.....	3,010
Commun. Action Agency of N. Central Alabama, 107 2nd Ave, NE, Decatur, AL 35602.....	9,625
Commun. Action of NW Alabama, 502 East College St., Florence, AL 35603.....	595
City of Tuscaloosa Community Planning, P.O. Box 2089, Tuscaloosa, AL 35403.....	3,010
Community Service Programs of W. Alabama, 601 17th St., Tuscaloosa, AL 35401.....	20,335
Housing Authority of Birmingham, 1826 3rd Ave., S., Birmingham, AL 35401.....	22,015
Mobile Housing Board, 151 S. Claiborne St., Mobile, AL 36633.....	36,575
Montgomery Housing Authority, 1020 Bell St., Montgomery, AL 36104.....	18,305
Carolina Regional Legal Services, 270 W. Evans St., Florence, SC 29503.....	12,495
Chesterfield-Marlboro Econ. Oppor., 71 Second St., Cheraw, SC 29502.....	2,625
Family Services Center, 1800 Main St., Columbia, SC 29201.....	8,225
Greenville Urban League, 15 Regency Hill Dr., Greenville, SC 29607.....	24,115
Palmetto Legal Services, 2109 Bull St., Columbia, SC 29202.....	10,010
Pee Dee Community Action Agency, P.O. Drawer 12670, Florence, SC 29505.....	24,990
Piedmont Legal Services, 148 E. Main St., Spartanburg, SC 29301.....	9,170
Spectrum Institute, 1108 Woodrow St., Columbia SC 29211.....	25,565
Trident United Way, 32 Ann Street, Charleston, SC 29413.....	22,715
Broward County Housing Authority, 1773 N. State Road 7, Lauderhill, FL 33313.....	45,500
CCCS/Palm Beach Co., 224 Datura St., Suite 205, West Palm Beach, FL 33401.....	50,000
CCCS/South Florida, 13014 N.E. 8th Ave., North Miami, FL 33181.....	75,000
Urban League of Palm Beach Co., 1700 N. Australian Ave., West Palm Beach, FL 33407.....	8,030
CEIBA Housing and Economic Dev., P.O. Box 203, Lauro Pinero 252, Ceiba, PR 00735.....	18,620
Instituto Ponceño Del Hogar, P.O. Box 5009, Ponce, PR 00733.....	9,240
CCCS/Western North Carolina, 50 S. French Broad Ave., Suite 236, Asheville, NC 28801.....	14,245
CCCS/Forsyth County, 926 Brookstown Ave., Winston-Salem, NC 27101.....	13,790
Cumberland Commun. Action Program, P.O. Drawer 2009, Fayetteville, NC 28302.....	40,145
Family Housing Services, 910 N. Alexander St., Charlotte, NC 28206.....	44,590
Johnston-Lee Community Action, P.O. Drawer 711, Smithfield, NC 27577.....	22,190
Joint Orange-Chatham Community Action, 105 W. Chatham St., Pittsboro, NC 27312.....	11,060
Mid-East Commission, P.O. Box 1787, Washington, NC 27889.....	2,905
North Carolina Client Councils, 216 E. Church St., Smithfield, NC 27577.....	17,220
Raleigh Housing Authority, 600 Tucker St., Raleigh, NC 27611.....	3,010
Gulf Coast Community Action Agency, 500 24th St., Gulfport, MS 39502.....	5,810
Housing Education and Econ. Dev., 3405 Medgar Evers Blvd., Jackson, MS 39203.....	20,020
Mississippi Dept. of Human Services, 421 W. Pascagoula St., Jackson, MS 39203.....	3,500
Jacksonville Urban League, 233 West Duval St., Jacksonville, FL 32202.....	14,665
Tallahassee Urban League, 923 Old Bainbridge Rd., Tallahassee, FL 32303.....	15,155
CCCS/Greater Knoxville, 1012 Helskell Ave., Knoxville, TN 37921.....	8,190

Douglas-Cherokee Economic Auth., 524 E. 1st North St., Morristown, TN 37816	2,345
East TN Human Resource Agency, 408 N. Cedar Bluff Rd., Suite 150, Knoxville, TN 37923	9,975
Upper East TN Human Dev. Agency, 301 Louis St., Kingsport, TN 37662	2,275
ACCEPT Consumer Credit Counseling, 510 E. Chestnut St., Louisville, KY 40201	14,350
Appalachian Foothills Housing Agency, 1448 Diedrich Blvd., Russell, KY 41169	1,505
Jefferson County Housing Authority, 810 Barret Ave., 4th Fl., Louisville, KY 40204	10,920
Louisville Urban League, 1535 W. Broadway, Louisville, KY 40203	26,425
Northern Kentucky Community Center, 824 Greenup St., Covington, KY 41011	31,185
Purchase Area Housing Corp., U.S. Highway 45 N, Mayfield, KY 42066	1,505
Tenant Services and Housing Counseling, 200 E. Main St., Lexington, KY 40507	16,065
Housing Opportunities Corp., 147 Jefferson Ave., Suite 800, Memphis, TN 38103	18,025
Memphis Urban League, 2279 Lamar Ave., Memphis, TN 38114	3,500
West Tennessee Legal Serv., 210 W. Main St., Jackson, TN 38302	21,945
Citizens for Affordable Housing, 1719 West End Ave., Suite 607, Nashville, TN 37203	24,920
HOPE, Inc., 1501 Herman St., Suite S, Nashville, TN 37208	20,265
Metropolitan Devel. and Housing Agency, 701 S. 6th St., Nashville, TN 37206	6,335
Metropolitan Social Services, 25 Middleton St., Nashville, TN 37201	46,550
Nashville Urban League, 1219 9th Ave., N, Nashville, TN 37208	16,310
Target Community Association, 606 E. Washington St., Pulaski, TN 38478	12,180
Consumer Credit Counseling Service, 1900 N. Mills Ave., Suite 5, Orlando, FL 32803	105,000
Metropolitan Orlando Urban League, 2512 W. Colonial Dr., Orlando, FL 32803	3,010
The Agricultural and Labor Program, Lynchburg Rd., Winter Haven, FL 33881	12,390
City of Tampa, Community Redevelopment Agency, 1310 9th Ave., Tampa, FL 33605	24,990
CCCS/Tampa Bay Area, 4265 Henderson Blvd., Tampa, FL 33629	3,010
Manatee Opportunity Council, 235 Ninth Ave. W, Bradenton, FL 34205	9,975
Hillsborough County Housing, 9260 Bay Plaza Blvd., Suite 510, Tampa, FL 33601	4,970
Total	1,366,243

Region 5

Family Service Association, 1704 North Road, SE, Warren, OH 44484	30,450
Fair Housing Contact Service, 333 South Main Street, Suite 300A, Akron, OH 44313	8,750
Near West Side Multi-Service Corp., 4115 Bridge Ave., Cleveland, OH 44113	14,000
Urban League of Greater Cleveland, 12001 Shaker Boulevard, Cleveland, OH 44120	11,830
Catholic Charities, Diocese of Youngstown, 225 Elm Street, Youngstown, OH 44503	14,735
Lutheran Housing Corporation, 4208 Prospect Ave., Cleveland, OH 44103	43,960
Family Service Agency, 535 Marmion Ave., Youngstown, OH 44502	11,515
Spanish Coalition for Housing, 3439 West North Ave., Chicago, IL 60647	32,830
Commun. Serv. Council of Northern Will County, 719 Parkwood Ave., Romeoville, IL 60441	37,205
Lake County Community Action Project, 106 South Sheridan Road, Waukegan, IL 60085	9,975
Commun. & Econ. Devel. Assoc. of Cook County, 224 N Des Plaines St., Chicago, IL 60661	60,974
Springfield Dept. of Human Relations, 227S 7th St., Suite 204, Springfield, IL 62701	9,975
Chicago Urban League, 4510 South Michigan Ave., Chicago, IL 60653	19,950
Michigan Housing Counselors, 237 Gratiot, Mt. Clemens, MI 48043	29,540
TULC Non-Profit Housing Corporation, 3901 Grand River, Detroit, MI 48208	42,735
Detroit Non-Profit Housing Corp., 1200 Sixth St., Suite 404, Detroit, MI 48226	30,030
Credit Counseling Centers, Inc., 27780 Novi Road, Suite 250, Novi, MI 48377	24,920
Regional Housing Center, 595 East Broad St., Suite 120, Columbus, OH 43205	29,750
CONSOC Housing Counseling, 1889 East Livingston Ave., Columbus, OH 43209	19,985
Portsmouth Inner-City Development Corp., 1206 Waller St., Portsmouth, OH 45662	9,975
Urban League of Flint, 202 East Boulevard Drive, Sult 200, Flint, MI 48503	25,025
Marion-Crawford Community Action Commission, 240 E. Church St., Marion, OH 43302	3,500
Better Housing League of Greater Cincinnati, 2400 Reading Road, Cincinnati, OH 45202	25,025
Montgomery County Community Action Agency, 318 So. Main St., Dayton, OH 45401	8,750
Community Action of Greater Indianapolis, 2445 N Meridian St., Indianapolis, IN 46208	13,125
Lake County, 2293 North Main Street, Crown Point, IN 46307	9,975
Housing Authority of the City of Fort Wayne, 2013 S. Anthony Blvd., Fort Wayne, In 46869	18,760
Hoosier Uplands Economic Development Corp., 521 W. Main Street, Mitchell, IN 47446	25,025
Hope of Evansville, 100 Washington Ave., Evansville, IN 47713	7,490
Craig Stanley Agency, 1667 Summit Ave., New Albany, IN 47150	8,750
Urban League of Northwest Indiana, 3101 Broadway, Gary, IN 46409	19,985
Housing Assistance Office, P.O. Box 1558, South Bend, IN 46634	8,750
Anderson Housing Authority, 528 West 11th Street, Anderson, IN 46016	24,990
REAL Services of St. Joseph County, Inc., 622 N. Michigan, South Bend, IN 46634	8,750
Housing Authority of the City of South Bend, 501 S. Scott St., South Bend, IN 46634	8,750
Nelson Neighborhood Improvement Association, 1330 Fifth, Muskegon, MI 47441	5,600
Human Development Corp., 429 Montague Ave., Caro, MI 48723	8,190
Housing Resource Center, 300 North Washington Square, Suite 302, Lansing, MI 48933	13,825
Consumer Credit Counseling Service, 1111 3rd Ave. South, Suite 336, Minneapolis, MN 55404	16,135
St. Paul Housing Information Office, 21 West Fourth St., St. Paul, MN 55102	15,050
Senior Housing Inc., 1885 University Ave., Suite 190, St. Paul, MN 55104	7,000
TACTICS, Inc. (Pilot City Regional Center), 1315 Penn Avenue North, Minneapolis, MN 55411	18,900
Southern Minnesota Regional Legal Services, 46 East 4th St., St. Paul, MN 55101	17,500
Community Advocates, 4906 West Fond du Lac Ave., Milwaukee, WI 53216	8,330
Community Action Inc., 2300 Kellogg Ave., Janesville, WI 53546	9,100
Westside Conservation Corporation, 3209 W. Highland Blvd., Milwaukee, WI 53208	15,050
Milwaukee United for Better Housing, 4011 W Capitol Dr., Suite 100, Milwaukee, WI 53216	10,500
Walker's Point Development, 734 South Fifth St., Milwaukee, WI 53204	16,415
Racine/Kenosha Community Action Agency, 72 7th Street, Racine, WI 53403	3,360
Total	874,689

Region 6

Consumer Credit Counseling/Dallas, 1949 Stemmons Freeway, Suite 200, Dallas, TX 75207	113,000
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Dallas Urban League, 3625 North Hall St., Suite 700, Dallas, TX 75219.....	27,302
Housing Opportunities/Forth Worth, 1305 Magnolia Avenue, Fort Worth, TX 76104.....	97,000
Community Care Housing Dev., 4625 North Freeway, Suite 260, Houston, TX 77091.....	15,900
Consumer Credit Counseling Services, 4203 Fannin, Houston, TX 77091.....	43,900
Gulf Coast Community Service Association, 6300 Bowling Green, Houston, TX 77021.....	30,000
Housing Opportunities Inc., 2900 Woodridge, Suite 302, Houston, TX 77087.....	52,400
Houston Area Urban League, 3215 Fannin, Houston, TX 77004.....	23,216
Organization of Christians Assisting People, 600 Foley, Port Arthur, TX 77640.....	6,800
City of San Antonio, 115 Plaza de Armas, Suite 200, San Antonio, TX.....	20,000
CCCS/San Antonio, 4203 Woodcock Dr., Suite 251, San Antonio, TX 78228.....	31,100
Austin Housing Authority, 1640 E. 2nd St., Austin, TX 78702.....	43,100
Colonias Del Valle, 1203 East Ferguson, Pharr, TX 78228.....	9,500
Child and Family Services, 1221 W. Ben White Blvd., Suite 112B, Austin, TX 78704.....	35,900
L'Anmar Communications, 301 South Frio, San Antonio, TX 78207.....	5,082
Greater El Paso S.E.R., 4838 Montana Ave., El Paso, TX 79903.....	31,826
Guadalupe Economic Services Corp., 1416 1st Street, Lubbock, TX 79401.....	75,011
Crawford-Sebastian Community Dev., 4831 Armour Ave., Fort Smith, AK 72914.....	20,000
Family Service Agency of Central Arkansas, 2700 Willow, N Little Rock, AK 72115.....	23,000
White River Regional Authority, P.O. Box 650, Melbourne, AK 72556.....	7,602
Urban League of Arkansas, 2200 Main Street, Little Rock, AK 72206.....	20,000
Central City Housing Development Corp., 2020 Jackson Ave., New Orleans, LA 70113.....	7,500
Desire Community Housing Corp., 3251 St. Ferdinand St., New Orleans, LA 70126.....	45,900
City of Lafayette, 705 West University, Lafayette, LA 70506.....	7,300
St. James Parish Council/Dept. of Human Resources, P.O. Box 87, Convent, LA 70723.....	4,000
St. Landry Community Action Agency, P.O. Drawer 1510, Opelousas, LA 70570.....	5,000
S.M.I.L.E. Community Action Agency, 501 St. John St., Lafayette, LA 70501.....	4,500
Housing Authority of the City of Slidell, P.O. Box 1392, Slidell, LA 70459.....	2,367
St. Mary Community Action Agency, 1407 Barrow Street, Franklin, LA 70538.....	1,200
Caddo Community Action Agency, 1530 Arlington, Shreveport, LA 71103.....	8,000
CENLA Community Action Committee, 230 Bolton Avenue, Alexandria, LA 71301.....	13,000
Ouachita Multi-Purpose Community Action Agency, 315 Plum, Monroe, LA 71210.....	7,327
Neighborhood Housing Service of Shreveport, 3034 Lakeshore Dr., Shreveport, LA 71133.....	7,500
Tulsa Urban League, 240 East Apache, Tulsa, OK 74105.....	2,014
Credit Counseling Centers of Oklahoma, 2140 South Harvard, Tulsa, OK 74159.....	62,000
Consumer Credit Counseling Service, 3230 N. Rockwell, Bethany, OK 73008.....	24,312
Housing Authority of the Chickasaw Nation, 401 Country Club, Ada, OK 74821.....	38,700
Consumer Credit Counseling Service of NM, 2727 San Pedro, NE, Albuquerque, NM 87110.....	26,367
Total.....	998,626

Region 7

Housing and Credit Counseling, 1195 SW Buchanan, Suite 203, Topeka, KS 66604.....	7,000
Lincoln County PHA, 16 N. Court Street, POB 470, Bowling Green, MO 63334.....	2,700
Family Housing and Advisory Services, Inc., 2416 Lake Street, Omaha, NE 68111.....	11,000
United Methodist Urban Ministry, 1611 North Mosley, Wichita, KS 67214.....	2,000
Urban League of Wichita, Inc., 1405 N. Minneapolis, Wichita, KS 67214.....	5,000
Holy Name Housing Corp., 3014 North 45th St., Omaha, NE 68104.....	5,000
Northside Residential Housing Corp., 5647 Delmar Blvd., St. Louis, MO 63112.....	22,061
Consumer Credit Counseling Services, 742 Duvall, P.O. Box 843, Salina, KS 67402.....	5,000
Goodwill Center for Independent Living, 1804 S. Eddy Street, Grand Island, NE 68801.....	1,500
Housing Information Center, 3810 Paseo, Kansas City, MO 64109.....	25,500
Missouri Valley Human Resource, P.O. Box 550, 1415 S. Odell St., Marshall, MO 65340.....	1,000
Economic Opportunity Foundation, 1542 Minnesota Avenue, Kansas City, KS 66102.....	2,500
West Central Missouri Community Action Agency, 106 West 4th, Appleton City, MO 64724.....	2,500
North Area Community Forum, 1005 Dunn Road, Florissant, MO 63031.....	12,000
Hawkeye Area Community Action Program Inc., 5560 Sixth St., SW, Cedar Rapids, IA 52404.....	5,200
Assistance, Info. Direction (AID) Center, 206 6th St., Sioux City, IA 51101.....	6,300
Lincoln Action Program, Inc., 2702 South 11th St., Lincoln, NE 68502.....	2,000
Urban League of Metropolitan St. Louis, 3701 Grandel Square, St. Louis, MO 63108.....	9,500
Metropolitan Lutheran Ministry, 3031 Holmes, Kansas City, MO 64109.....	15,100
City of Des Moines, E 1st and Des Moines St, Des Moines, IA 50307.....	6,200
Total.....	149,061

Region 8

Weber State University, 3750 Harrison Blvd., Ogden, UT 84408.....	10,196
Salt Lake Community Action, 764 South, 200 West, Salt Lake City, UT 84101.....	17,178
Catholic Social Services, 302 Jefferson St., Pueblo, CO 81004.....	8,033
Boulder County Housing Authority, P.O. Box 471, Boulder, CO 80306.....	27,900
Consumer Credit Couns. Ser. of N. CO, 1136 E. Stuart, Suite 4201, Ft. Collins, CO 80525.....	6,519
Neighbor-to-Neighbor, 424 Pine St., Suite 203, Ft. Collins, CO 80524.....	32,596
Northeast Denver Housing Authority, 1735 Gaylord St., Denver, CO 80206.....	16,839
Adams County Housing Authority, 7190 Colorado Blvd., Commerce City, CO 80222.....	20,793
Consumer Credit Couns. Ser. of S. CO, 1233 Lake Plaza Drive, Colorado Springs, CO 80906.....	39,887
City of Aurora, Homeownership Assistance Program, 9801 East Colfax Ave., Aurora, CO 80010.....	34,480
Brothers Redevelopment, 1111 Osage St., Suite 210, Denver, CO 80204.....	31,020
SE North Dakota Community Action, 3233 South University Dr., Fargo, ND 58108.....	2,966
Community Action and Development, 652 West Villard, Dickinson, ND 58601.....	3,615
Community Action Opportunity, 420 3rd St. SW, P.O. Box 1057, Minot, ND 58702.....	5,469
Consumer Credit Counsel. Serv. of Lutheran Soc. Serv., 601 W 11th St., Sioux Falls, SD 57709.....	1,792
Consumer Credit Counseling Serv. of the Black Hills, 621 6th Street, Rapid City, SD 57709.....	15,232
Northwest Montana Human Resources, P.O. Box 1058, Kalispell, MT 59901.....	3,986
Total.....	278,501

Region 9

Consumer Credit Counseling Services of Arizona, 1930 Peoria, 103, Phoenix, AZ 85029.....	80,000
Chicanos Por La Causa, Inc., 1112 East Buckeye Road, Phoenix, AZ 85034.....	43,144
Neighborhood Improvement and Housing Devel., 920 East Madison St., Phoenix, AZ 85034.....	50,000
Fair Housing of Orange County, 1222 North Broadway, Santa Ana, CA 92701.....	69,564
Inland Mediation Board, 410 North Lemon Ave., Ontario, CA 91764.....	44,380
Consumer Credit Counseling Services of Arizona, 6135 E. Grant Rd., Tucson, AZ 85712.....	38,000
Catholic Social Services, 155 West Helen St., Tucson, AZ 85705.....	15,000
Chicanos Por La Causa, Inc., 1525 N. Oracle Road, Tucson, AZ 85705.....	20,000
Westminster Neighborhood Association, Inc., 1776 East Century Blvd., Los Angeles, CA 90017.....	35,000
Consumer Credit Counseling Services of Los Angeles, 1308 West 8th St., Los Angeles, CA 90017.....	38,000
Better Valley Services, 800 Laurel Canyon Road, North Hollywood, CA 91605.....	25,000
Housing Authority of the County of Santa Barbara, 815 West Ocean, Lompac, CA 93436.....	10,000
Poor People Pulling Together, 1801 N. "J" Street, Las Vegas, NV 89105.....	17,500
Housing Authority of the County of Stanislaus, 1701 Robertson Road, Modesto, CA 95351.....	10,000
Neighborhood House Association, 841 South 41st St., San Diego, CA 92113.....	30,000
Eden Council for Hope and Opportunity, 770 "A" St., Hayward, CA 94541.....	41,000
City of Oakland, 300 Lakeside Drive, 15th Floor, Oakland, CA 94612.....	30,000
Pacific Community Services, 401 Railroad Ave., P.O. Box 1397, Pittsburg, CA 94565.....	25,000
Project Sentinel, 430 Sherman Ave., Suite 308, Palo Alto, CA 94306.....	8,000
Human Investment Projects, Inc., 364 South Railroad Ave., San Mateo, CA 94401.....	4,000
Independent Living Resources, 70 Tenth Street, San Francisco, CA 94103.....	4,000
Project Match, 1671 Park Ave., #21, San Jose, CA 95126.....	3,200
Council on the Aging of Sonoma County, 730 Bennett Valley Road, Santa Rosa, CA 95404.....	1,120
Hale Mahaolu, 200 Nina Ave., Kahului, HI 96732.....	10,000
Hawaii Credit Counseling Services, 2153 North King Street, #306, Honolulu, HI 96919.....	7,000
Total	658,908

Region 10

Spokane Neighborhood Action Programs, E 2116 First Ave., Spokane, WA 99202.....	26,347
Access Inc., 510 E. Main St. Medford, OR 97501.....	3,890
Oregon Housing and Associated Services, 525 Glen Creek Rd., NW, Suite 210, Salem, OR 97304.....	3,810
Pierce County Community Action Agency, 8811 S. Tacoma Way, Bldg. 2, Tacoma, WA 98499.....	12,005
Freemont Public Association, 3601 Fremont Ave. N., Seattle, WA 98103.....	11,760
Urban League of Metropolitan Seattle, 105 14th Ave., Seattle, WA 98122.....	18,065
Anchorage Neighborhood Housing Serv., 3700 Woodland Dr., Suite 500, Anchorage, AK 99517.....	3,843
Consumer Credit Counseling Services of Alaska, 208 E. Fourth St., Anchorage, AK 99501.....	3,990
Umpqua Community Action Network, 2448 West Harvard Blvd., Roseburg, OR 97470.....	12,254
Housing Services of Oregon, 34420 SW Tualatin Valley Highway, Hillsboro, OR 97123.....	8,875
Total	102,839
Grand total	5,300,458

Prepurchase and Foreclosure Prevention Counseling Demonstration

DeKalb-Fulton Housing Counseling Center, 4151 Memorial Dr., Suite 107E Decatur, GA 30032.....	116,600
Spanish Coalition for Housing, 3439 West North Ave., Chicago, IL 60647.....	116,666
Commun. & Econ. Devel. Assoc. of Cook County, 224 N Des Plaines St., Chicago, IL 60661.....	116,600
Total	349,866

[FR Doc. 92-28750 Filed 11-25-92; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

PRT-774027.

Applicant: James Fero, Anchorage, Alaska.

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. J. Van Druten, Victoria West, South Africa, for

purposes of enhancement of survival of the species.

PRT-774024.

Applicant: Juan Beltran Gala, Texas A&M University, College Station, TX.

The applicant requests a permit to import blood, skins, and teeth of Spanish lynx (*Felis pardalis*) previously collected and accessioned in museums or with universities for genetic research purposes.

PRT-773566.

Applicant: Ringling Bros.-Barnum & Bailey Circus, 8807 Westwood Center Drive, Vienna, VA 88182.

The applicant requests a permit to reexport 5 captive-born male and 4 captive-born female tigers (*Panthera tigris*) to Clubb-Chipperfield, Chipperfield Farm, Heythorpe, Chipping, Norton, Oxfordshire, England, for enhancement of propagation or survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281)

Dated: November 20, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-28739 Filed 11-25-92; 8:45 am]

BILLING CODE 4310-55-M

Niobrara Scenic River Advisory Commission Meeting

AGENCY: National Park Service.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463). The Commission was established pursuant to Public Law 102-50, section 5. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters pertaining to the development of a management plan, and on the management and operation of the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of Public Law 102-50 which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

MEETING DATE & TIME: January 14, 1993, 1:30 p.m.

ADDRESSES: Valentine Public Library Meeting Room, 324 N. Main Street, Valentine, NE.

(In the event of inclement weather, the meeting will be held the following week, January 21, 1993, at 1:30 p.m. at Cherry County Court House. Cancellation notice will be communicated over the local radio stations.)

AGENDA: Topics include: Review a draft of the Standard Operating Procedures and proposed bylaws for the commission; further discussion of administrative procedures including replacement procedures for commission members; status of overlay information from the four counties, an update from the National Park Service on projects administered from the Niobrara/Missouri Scenic Riverways office in O'Neill, NE; and a proposed agenda and date, time, and location of the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chairman at the beginning of the meeting. In order to

accomplish the agenda for the meeting the Chairman may want to limit or schedule public presentations. The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverway in O'Neill, NE.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, NE 68763-0591, (402) 336-3970.

Dated: November 20, 1992.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 92-28808 Filed 11-25-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 33122 (Sub-No. 1) et al.]

Burlington Northern Railroad Company—Lease and Operation Exemption—Norfolk and Western Railway Company Between Des Moines and Albia, IA et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Burlington Northern Railroad Company (BN) and Norfolk and Western Railway Company (N&W) from the requirements of prior approval under 49 U.S.C. 11343, *et seq.*, with respect to the following lease and operation transactions: (1) In Finance Docket No. 32122 (Sub-No. 1), BN's lease and operation of N&W's portion of a joint BN/N&W line between Des Moines, IA and Swan, IA, and between Tracy, IA and Hamilton, IA, a total of 26.62 miles; (2) in Finance Docket No. 32122 (Sub-No. 2), N&W's lease and operation of approximately 5 miles of BN line and its Glake Yard, in Des Moines; and (3) in Finance Docket No. 32122 (Sub-No. 3), BN's lease and operation of approximately 1 mile of N&W yard and industrial trackage in Quincy, Adams County, IL. Each exemption approval is subject to standard labor protective conditions

DATES: This exemption is effective on December 27, 1992. Petitions to stay must be filed December 7, 1992. Petitions to reopen must be filed by December 17, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32122 (Sub-No. 1, Sub-No. 2, and Sub-No. 3) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives: Ethel A. Allen, 3800 Continental Plaza 777 Main Street, Fort Worth, TX 76102-5384.

Robert J. Cooney, Three Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721].

Decided: November 18, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-28803 Filed 11-25-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 431X)]

CSX Transportation, Inc.—Abandonment Exemption—In New Hanover County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission is exempting from the prior approval requirements of 49 U.S.C. 10903-10904 CSX Transportation, Inc.'s application to abandon a portion of its rail line from Milepost ACB-246.83 to Milepost ACB-249.5, a distance of 2.67 miles in Wilmington, New Hanover County, NC, subject to public use, trail use/rail banking, and labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on

December 27, 1992. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)¹ and other requests for interim trail use must be filed by December 7, 1992. Petitions to stay must be filed by December 14, 1992. Petitions to reopen must be filed by December 22, 1992.

ADDRESSES:

Send pleadings referring to Docket No. AB-55 (Sub. No. 431X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger—J150, Senior Counsel, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT:

Richard B. Felder (202) 927-5610. [TDD for hearing impaired: (202) 927-5721]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: November 19, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,
Secretary

[FR Doc. 92-28804 Filed 11-25-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

- (1) The title of the form/collection,
- (2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
- (3) How often the form must be filled out or the information is collected;
- (4) Who will be asked or required to respond, as well as a brief abstract;
- (5) An estimate of the total number of respondents and the amount of time

estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

- (1) Immigrant Petition for Alien Workers
- (2) Form I-140, Immigration and Naturalization Service
- (3) On occasion
- (4) Individuals or households and Businesses or other for-profit. The I-140 information is used to determine eligibility for the requested immigration benefit.
- (5) 186,000 annual responses at 1.0 hour per response
- (6) 186,000 annual burden hours
- (7) Not applicable under 3504(h)

- (1) Formula Grant Application Forms
- (2) Office of Justice Programs
- (3) Annually
- (4) State or local governments. This forms package includes forms needed by the 56 States and territories to apply for and administer the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program. It also contains forms needed to report alien convictions to the Immigration and Naturalization Service, as a condition of receiving grant funds.
- (5) 70,108 annual responses at .3827 hours per response
- (6) 26,829 annual burden hours
- (7) Not applicable under 3504(h)

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

- (1) Guam Visa Waiver Agreement
- (2) I-760, Immigration and Naturalization Service
- (3) On occasion
- (4) Businesses or other for-profit and Non-profit institutions and Small businesses or organizations. The I-760 is used as the agreement between a transportation line and the United States regarding the entry and inspection of aliens coming to Guam from foreign territories.
- (5) 5 annual responses at 1 hour per response
- (6) 5 annual burden hours
- (7) Not applicable under 3504(h)

New Collection

- (1) Intermediate Sanctions—Boot Camp Training and Technical Assistance Program
 - (2) National Institute of Corrections
 - (3) One-time response
 - (4) State or local governments. The survey information will be used to prepare an *Implementation Guide* that will provide step-by-step guidance to assist state and local governmental agencies in the planning, development, implementation, management, and evaluation of new boot camp programs or expanding and revising existing ones.
 - (5) 40 annual responses at 1 hour per response
 - (6) 40 annual burden hours
 - (7) Not applicable under 3504(h)
- Public comment on these items is encouraged.

Dated: November 20, 1992.

Don Wolfrey,
Department Clearance Officer, Department of Justice.

[FR Doc. 92-28747 Filed 11-25-92; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and Other Environmental Statutes

Notice is hereby given that a second proposed settlement agreement in *In re National Gypsum Co.*, Case No. 390-37213-SAF-11 (Bankr. N.D. Tex.) is being lodged with the United States Bankruptcy Court for the Northern District of Texas. The settlement agreement principally concerns the Salford Quarry Site in Pennsylvania and Operable Units Two and Three of the

¹ See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

Millington Asbestos Dump Sites in New Jersey. With respect to the Salford Quarry Site, the settlement agreement provides for recognition of a \$2 million administrative claim to the United States on behalf of the U.S. Environmental Protection Agency and contains provisions regarding the future ownership of the Salford Quarry as well as future reimbursement of certain of the United States' unreimbursed cleanup costs. With respect to Operable Unit Two of the Asbestos Dump Sites, the settlement agreement provides for recognition of a \$7,270,612 general unsecured claim to the United States on behalf of the U.S. Environmental Protection Agency. With respect to Operable Unit Three of the Asbestos Dump Sites, the settlement agreement provides for recognition of a \$3.5 million general unsecured claim to the United States on behalf of the U.S. Department of the Interior. The settlement agreement also contains other provisions concerning the recognition of a \$293,536 general unsecured claim to the United States in reimbursement of certain enforcement costs. Finally, with respect to sites other than those already mentioned, the settlement agreement contains provisions regarding the recognition of certain currently unidentified potential environmental claims as either general unsecured claims or as claims that are not discharged by the bankruptcy proceedings.

The Department of Justice will receive comments relating to the proposed settlement agreement through December 7, 1992. Comments must be received by December 7, 1992, should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should specifically refer to *In re National Gypsum Co.*, D.J. reference #90-11-2-689.

The proposed settlement agreement may be examined at the Office of the United States Attorney for the Northern District of Texas, 1100 Commerce Street, room 16 G 28, Dallas, Texas; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed settlement agreement may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the proposed settlement agreement, please enclose a check in the amount of \$20.25

(25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.

[FR Doc. 92-28742 Filed 11-25-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Pennsylvania:

PA91-29 (Nov. 27, 1992)..... p.All.

PA91-31 (Nov. 27, 1992)..... p.All.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume I: Wage Decision No. CT91-4, Modification No. 1 through 4

Pursuant to the Regulations, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:

CT91-1 (Feb. 22, 1991)..... p.All.
CT91-3 (Feb. 22, 1991)..... p.All.
CT91-4 (Feb. 22, 1991)..... p.All.

District of Columbia:

DC91-1 (Feb. 22, 1991)..... p.All.
DC91-2 (Feb. 22, 1991)..... p.All.

Georgia:

GA91-3 (Feb. 22, 1991)..... p.All.
GA91-22 (Feb. 22, 1991)..... p.All.

Maryland:

MD91-34 (Feb. 22, 1991)..... p.All.

Pennsylvania:

PA91-7 (Feb. 22, 1991)..... p.All.
PA91-9 (Feb. 22, 1991)..... p.All.
PA91-23 (Feb. 22, 1991)..... p.All.
PA91-26 (Feb. 22, 1991)..... p.All.

Volume II

Illinois:

IL91-8 (Feb. 22, 1991)..... p.145,
p.146.

Iowa:

IA91-14 (Feb. 22, 1991)..... p.All.

Missouri:

MO91-3 (Feb. 22, 1991)..... p.All.
MO91-8 (Feb. 22, 1991)..... p.All.

New Mexico:

NM91-1 (Feb. 22, 1991)..... p.779,
pp.781-784,
pp.787-788,
p.794a.

Volume III

Colorado:

CO91-4 (Feb. 22, 1991)..... p.All.
CO91-5 (Feb. 22, 1991)..... p.All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 20th day of November 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-28688 Filed 11-25-92; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Sahara Coal Company, Inc. [Docket No. M-92-145-C]

Sahara Coal Company, Inc., P.O. Box 330, Harrisburg, IL 62946 has filed a petition to modify the application of 30 CFR 75.352 (aircourses and belt haulage entries) to its Mine No. 21 (I.D. No. 11-00784) located in Saline County, Illinois. The petitioner proposes to continue to ventilate the belt haulage slope with return air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. KYN Coal Company [Docket No. M-92-146-C]

KYN Coal Company, HCR Box 435, Conaway, Virginia 24603 has filed a

petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 4 Mine (I.D. No. 15-17134) located in Pike County, Kentucky. The petitioner proposes to construct seals of 8-inch solid blocks according to plans appended to the petition.

3. G & P Contractors [Docket No. M-92-147-C]

Slone/McCoy and Associates, Inc., 415 Bomont Avenue, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its Stony Fork Mine (I.D. No. 15-17306) located in Knox County, Kentucky. The Petitioner proposes to use a hand-held continuous-duty methane and oxygen monitor on permissible three-wheel tractors with drag bottom buckets.

4. Mallie Coal Company [Docket No. M-92-148-C]

Mallie Coal Company, Route 1, Box 211, Woodbine, Kentucky has filed a petition to modify the application of 30 CFR 75.313 (methane monitors) to its No. 2 Mine (I.D. No. 15-17314) located in Knox County, Kentucky. The petitioner proposes to use a hand-held continuous-duty methane and oxygen monitor on permissible three-wheel tractors with drag bottom buckets.

5. C H & S Coal Company, Inc. [Docket No. M-92-149-C]

C H & S Coal Company, P.O. Box 21, Birchleaf, Virginia 24220 has filed a petition to modify the application of 30 CFR 75.523-3 (automatic emergency-parking brakes) to its No. 3 Mine (I.D. No. 44-01246) located in Scott County, Virginia. Due to the slope of the mine and coal bed undulation, the petitioner proposes to operate S & S 482 scoops without emergency brakes. The petitioner states that the emergency brakes would cause lock-up and skidding of the equipment and a diminution of safety to the operator.

6. Buck Mountain Coal Company [Docket No. M-92-150-C]

Buck Mountain Coal Company, RD #4, Box 357-B, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations substations, compressor stations, shops, and permanent pumps) to its No. 2 Mine (I.D. No. 36-02053) located in Schuylkill, Pennsylvania. The petitioner proposes to use an underground battery-charging stations to charge locomotive batteries on idle shifts, and have the air currents used to

ventilate the battery charger and batteries travel the intake to the idle faces and then enter the return. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. E & E Fuels [Docket No. M-92-151-C]

E & E Fuels, P.O. Box 922, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Orchard Slope (I.D. No. 36-08346) located in Schuylkill, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) with an increased rope strength safety factor and secondary safety rope connection as an alternate to safety catches. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Shadle Coal Company [Docket No. M-92-152-C]

Shadle Coal Company, RD #4, Box 358-D, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations substations, compressor stations, shops, and permanent pumps) to its Shadle Slope (I.D. No. 35-06031) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a underground battery-charging station to charge the motor when the mine is idle, and deenergize the station while the mine is in operation. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Drummond Company, Inc. [Docket No. M-92-153-C]

Drummond Coal Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mary Lee No. 1 Mine (I.D. No. 01-00515) located in Walker County, Alabama. Due to unsafe conditions in the mine, the petitioner proposes to establish evaluation points to monitor two idle sections. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Golden Oak Mining Company, L.P. [Docket No. M-92-154-C]

Golden Oak Mining Company, L.P., HC 85, Box 177, Whitesburg, Kentucky

41858 has filed a petition to modify the application of 30 CFR 75.1710-1 (canopies or cabs; self-propelled electrica face equipment; installations requirements) to its Golden Oak No. 2 Mine (I.D. No. 15-16809) located in Knott County, Kentucky. The petitioner requests relief from the use of canopies and cabs on electric face equipment. The petitioner asserts that the use of cabs and canopies would result in unsafe conditions to the operator.

11. Enlow Fork Mining Company [Docket No. M-92-155-C]

Enlow Fork Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Enlow Fork Mine (I.D. No. 38-07416) located in Greene County, Pennsylvania. The petitioner proposes to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its longwall mining system. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. Paramount Coal Corporation [Docket No. M-92-156-C]

Paramount Coal Corporation, P.O. Box 5100, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Deep Mine No. 20 (I.D. No. 44-06595) located in Wise County, Virginia. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries used as intake aircourses. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Paramount Coal Corporation [Docket No. M-92-157-C]

Paramount Coal Corporation, P.O. Box 5100, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations substations, compressor stations, shops, and permanent pumps) to its Deep Mine No. 20 (I.D. No. 44-06595) located in Wise County, Virginia. The petitioner proposes to install a carbon monoxide detection system in the belt entry splits of air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. Bradys Bend Corporation [Docket No. M-92-16-M]

Bradys Bend Corporation, Bradys Bend, Pennsylvania has filed a petition to modify the application of 30 CFR 57.4460(b) to its Kaylor No. 3 Limestone Mine (I.D. No. 36-00033) located in Armstrong County, Pennsylvania. The petitioner proposes to store boats and motor homes and other items underground at the mine in a fireproof block storage area with a small amount of gasoline in the gas tanks. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. Hecla Mining Company [Docket No. M-92-17-M]

Hecla Mining Company, Box C-8000, Coeur d'Alene, Idaho 83814 has filed a petition to modify the application of 30 CFR 57.19102 (shaft guides) to its Lucky Friday Unit Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petitioner proposes to certain hoisting equipment to transport persons into boreholes between sublevels for limited routine maintenance, repair, and ground support work to be done. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. Hecla Mining Company [Docket No. M-92-18-C]

Hecla Mining Company, Box C-8000, Coeur d'Alene, Idaho 83814 has filed a petition to modify the application of 30 CFR 57.19054 (rope guides) to its Lucky Friday Unit Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petitioner proposes to use certain hoisting equipment to transport persons into boreholes between sublevels for limited routine maintenance, repair, and ground support work to be done. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

17. Hecla Mining Company [Docket No. M-92-19-M]

Hecla Mining Company, Box C-8000, Coeur d'Alene, Idaho 83814 has filed a petition to modify the application of 30 CFR 57.19057 (hoisting operator's physical fitness) to its Lucky Friday Unit Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petitioner proposes to use certain hoisting equipment to transport persons into boreholes between sublevels for limited routine maintenance, repair, and ground support work to be done. The petitioner

asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1992. Copies of these petitions are available for inspection at that address.

Dated: November 18, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-28818 Filed 11-25-92; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Washington State Standards: Request for Public Comment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for comment on the Washington State amendments to: Multi-Piece/Single Piece Rim Wheels Standard and Nonionizing Radiation Standard; and on the following Washington State Standards: Field Sanitation, Air Contaminants, Crane or Derricks Suspended Personnel Platforms, Hearing Conservation, and Crime Prevention Requirements for Late Night Retail Establishments.

SUMMARY: This notice invites public comment on Washington's amendments to its Multi-Piece/Single Piece Rim Wheels Standard and its Nonionizing Radiation Standard; and Washington's Standards on: Field Sanitation, Air Contaminants, Crane or Derrick Suspended Personnel Platforms, Hearing Conservation, and Crime Prevention Requirements for Late Night Retail Establishments.

The Multi-Piece/Single Piece Rim Wheels Standard amendment is comparable to the Federal final rule at 29 CFR 1910.177(a)(2) as published in the *Federal Register* (52 FR 36026) on September 25, 1987.

The Nonionizing Radiation Standard amendments are comparable to the Federal final rule at 29 CFR 1910.97 as published in the *Federal Register* (36 FR 10522) on May 29, 1971.

The Field Sanitation standard is comparable to the Federal final rule at 29 CFR 1928.110, Field Sanitation, as published in the *Federal Register* (52 FR 16095) on May 1, 1987.

The Air Contaminants Standard is comparable to the Federal final rule at 29 CFR 1910.1000, Air Contaminants, as published in the *Federal Register* (54 FR 2920) on January 19, 1989, and corrected in 54 FR 28054 and 54 FR 47513 on July 5, 1989 and November 15, 1989, respectively.

The Crane or Derrick Suspended Personnel Platforms Standard is comparable to the Federal final rule at 29 CFR 1926.550(g), Cranes and Derricks (Suspended Personnel Platforms), as published in the *Federal Register* (53 FR 27959) on August 2, 1988 and with amendment to 29 CFR 1926.550(g)(3)(i)(D) as published in the *Federal Register* (54 FR 15405) on April 18, 1989.

The Hearing Conversation Standard is comparable to the Federal final rule at 29 CFR 1910.95 (c)-(p), Occupational Noise Exposure, as published in the *Federal Register* (48 FR 9738) on March 8, 1983 and subsequent corrections appearing in the *Federal Register* (48 FR 29687) on June 28, 1983.

The Crime Prevention Requirements for Late Night Retail Establishments Standards are independent State standards for which there is no Federal OSHA equivalent.

Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard that contains significant differences, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment as to whether these Washington standards and amendments meet the above requirements.

DATES: Written comments should be submitted December 28, 1992.

ADDRESSES: Written comments should be submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs,

Occupational Safety and Health Administration, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219-8184.

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan, approved under section 18(b) of the Act, are set forth in section 18(c)(2) of the Act and in 29 CFR 1902.29, CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the *Federal Register* (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Independent State standards must be submitted for OSHA's review and approval. Newly adopted State standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause".)

On January 26, 1973, notice was published in the *Federal Register* (38 FR 2421) of the approval of the Washington State plan and the adoption of Subpart F to Part 1952 containing the decisions. The Washington State plan provides for the adoption of State standards in the following manner.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

The Director of the Washington Department of Labor and Industries (the Director) is empowered to create, adopt, modify, and repeal rules and regulations governing occupational safety and health standards following public notice

and a hearing in conformance with the State's Administrative Procedures Act. Public notice describing the subject matter of the proposed rule, where, and when the hearing will occur must be published in State newspapers at least 30 days in advance of the hearing. The Director considers all recommendations by any member of the public in the promulgation process. Whenever the Director adopts a standard, the effective date is usually 30 days after the signing.

Multi-Piece/Single Piece Rim Wheels

By letter dated May 10, 1989 from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, the State submitted an amendment to its Multi-Piece/Single Piece Rim Wheels Standard comparable to the Federal final rule at 29 CFR 1910.177 as published in the **Federal Register** (49 FR 4350) on February 3, 1984 and amended in the **Federal Register** (52 FR 36026) on September 25, 1987 and (53 FR 34737) on September 8, 1988. The State's amendment (WAC 296-24-21701) was adopted July 6, 1988 and became effective on August 4, 1988 (Administrative Order 88-11).

On March 8, 1990 OSHA approved in the **Federal Register** the original Washington Multi-Piece/Single Piece Rim Wheels Standard and responses to the 1984 and 1988 Federal amendments as identical to the Federal rule. The State's amendment under discussion was developed in response to the September 25, 1987 Federal amendment to the standard in which OSHA extended the standard's scope to include marine terminals in addition to general industry. Washington, however, chose to expand the scope to include all places of employment except construction. OSHA's Directorate of Safety Standards Programs compared this amendment to the Federal standard and concluded that the State's amendment is at least as effective as the Federal.

Nonionizing Radiation

On its own initiative, the State submitted by letter dated November 20, 1990 from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, State amendments to its Nonionizing Radiation standard comparable to the Federal final rule at 29 CFR 1910.97 as published in the **Federal Register** (36 FR 10522) on May 29, 1971. The State's amendments were adopted on December 14, 1984 and became effective on January 10, 1985 (Administrative Order 84-24).

On August 17, 1976, OSHA approved in the **Federal Register** (41 FR 34837) the original Washington Nonionizing

Radiation Standard. The State's amendments incorporate updated guidelines from the American Conference of Governmental Industrial Hygienists (ACGIH) and the American National Standards Institute (ANSI). The State's standard now specifically requires the radiofrequency radiation warning symbol to include microwave radiation and requires the warning symbol to be posted at entrances to areas where the PEL may be exceeded. The standard also includes extensive requirements for complying with PELs. OSHA's Directorate of Health Standards Programs compared this amendment to the Federal standard and concluded that the State's amendment is at least as effective as the Federal.

Field Sanitation

On its own initiative and in response to Federal standards changes, the State submitted by letter dated May 8, 1987 from Richard A. Davis, Director, to James W. Lake, Regional Administrator, and by letters dated February 15, 1989, February 27, 1989, and June 15, 1989, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard and amendments comparable to the Federal final rule at 29 CFR 1928.110 as published in the **Federal Register** (52 FR 16095) on May 1, 1987.

On May 8, 1987, the State submitted a State-initiated Field Sanitation standard (WAC 296-306) which was adopted on April 22, 1987, with an effective date of May 30, 1987. The National Office returned the State-initiated standard in the State explaining that it would have to be resubmitted as a response to the Federal Field Sanitation Standard. On February 27, 1989 the State resubmitted the Field Sanitation rule (WAC 296-306) which was adopted on April 22, 1987, with an effective date of May 22, 1987, under Washington Administrative Order 86-46, and amended on November 14, 1988, with an effective date of December 14, 1988, under Washington Administrative Order 88-25, as a response to the Federal standard. The National Office review revealed discrepancies, and the standard was returned to the State for correction. On June 15, 1989, the State submitted a corrective amendment (WAC 296-306) which was adopted on May 15, 1989, with an effective date of June 30, 1989, under Washington Administrative Order 89-03.

This standard has been reviewed and compared with the relevant Federal standard by OSHA's Directorate of Health Standards Programs. OSHA has determined that the State standard is at least as effective as the Federal

standard. However, there are three areas of significant difference between the two standards. The State requires running water for handwashing facilities. The State does not exempt field work of three hours or less from its standard, and the employer is required to document inspections and keep the records at the worksite at least seventy-two hours.

Air Contaminants

In response to Federal standards changes, the State submitted by letters dated July 14, 1989 and February 9, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to the Federal standard at 29 CFR 1910.1000, Air Contaminants, as published in the **Federal Register** (54 FR 2920) on January 19, 1989, and corrected in 54 FR 28054 and 54 FR 47513 on July 5, 1989 and November 15, 1989, respectively. The State's first submission (WAC 296-62) dated July 14, 1989, was adopted on July 6, 1989, with an effective date of August 7, 1989, under Washington Administrative Order 89-06. National Office review revealed discrepancies, and the standard was returned to the State for correction. On February 9, 1990, the State submitted a corrective amendment (WAC 296-62-075) which was adopted on January 11, 1990, with an effective date of February 26, 1990, under Washington Administrative Order 89-20.

These amendments have been reviewed and compared with the relevant Federal standard by OSHA's Directorate of Safety Standards Programs. OSHA has determined that the State standard is at least as effective as the Federal. There are, however, areas of significant difference between the two standards. The State's standard covers all industries as opposed to solely general industry. WAC 296-62-07515 Table 1 maintains a lower PEL for total dust of 10mg/m³ for nineteen substances where the Federal PEL is 15mg/m³; maintains both a TWA and STEL for some substances where the Federal standard lists only a STEL or only a TWA; maintains TWA, STEL, and ceiling limits for chlorine where the Federal standard lists only TWA and STEL; includes skin notations for thirteen substances which are not similarly noted in the Federal table; maintains a lower PEL than the Federal standard for sixteen substances; and covers over 30 additional substances.

Crane or Derrick Suspended Personnel Platforms

In response to Federal standards changes, the State submitted by letters dated June 15, 1989, and February 9, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, a State standard comparable to the Federal standard at 29 CFR 1926.550(g), Crane or Derrick Suspended Personnel Platforms, as published in the *Federal Register* (53 FR 27959) on August 2, 1988. The State's first submission (WAC 296-155-48533), dated June 15, 1989, was adopted on May 15, 1989, with an effective date of June 30, 1989, under Washington Administrative Order 89-03. National Office review revealed discrepancies and the standard was returned to the State for correction. On February 9, 1990, the State submitted a corrective amendment which also incorporated a response to OSHA's amendment to 29 CFR 1926.550(g)(3)(i)(D), as appeared in the *Federal Register* (54 FR 15405) on April 18, 1989. The State's corrective amendment was adopted on January 11, 1990, with an effective date of February 26, 1990, under Washington Administrative Order 89-20.

This standard has been reviewed and compared with the relevant Federal standard by OSHA's Directorate of Safety Standards Programs. OSHA has determined that the State standard is at least as effective as the Federal. However, there are four areas of significant difference between the two standards. The State requires that a welder add to or modify the equipment if a barrel-type platform is used (WAC 296-155-48533(7)(m) (i) through (iv)) and that all platforms be load rated (WAC 296-155-48533(a)).

Hearing Conservation

In response to Federal standards changes, the State submitted by letter dated June 14, 1984 from Richard E. Martin, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to the Federal standard at 29 CFR 1910.95(c)-(p), Occupational Noise Exposure, as published in the *Federal Register* (48 FR 9776) on March 8, 1993, and corrected in the *Federal Register* (48 FR 29687) on June 28, 1983. The State's submission (WAC 296-62-09015 through WAC 296-62-09051) dated June 14, 1984, was adopted on November 30, 1983, with an effective date of December 30, 1983, under Washington Administrative Order 83-34.

This standard has been reviewed and compared with the relevant Federal

standard by OSHA's Directorate of Safety Standards Programs. OSHA has determined that the State standard is at least as effective as the Federal. There are, however, areas of significant difference between the two standards. The State's standard covers all industries as opposed to solely general industry and construction. Hearing protectors attenuate noise to 85 dB for everyone (WAC 296-62-09033(2)(a)). The Federal standard requires that hearing protectors attenuate to 90 dB, and to 85 dB for those workers who have suffered a standard threshold shift (STS). WAC 296-62-09031(2)(a)-(c) requires that hearing protectors must be worn by workers exposed to 8-hour time-weighted average (TWA) noise levels of 85 dB or greater, in noise areas above 115dB, or where impulse/impact noise is above a 140 dB peak. The Federal standard requires that hearing protection be worn when 8-hour TWA noise level of 90 dB are encountered, while only those who have suffered an STS are required to wear hearing protectors at 85 dB. WAC 296-62-09039 requires that warning signs must be posted in 115 dB areas. OSHA has no similar warning sign requirement. According to WAC 296-62-09026, the employer must upon request prepare and submit written compliance plans (WAC 296-62-09026(2)). OSHA has no similar compliance plan requirement. In addition, Washington did not adopt OSHA's provision to allow for presbycusis in calculating the required annual audiogram (29 CFR 1910.95(g)(10)(ii)).

Crime Prevention Requirements for Late Night Retail Establishments

The State submitted by letter dated February 9, 1990, from Joseph A. Dear, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards for Crime Prevention Requirements for Late Night Retail Establishments (WAC 296-24-102 and WAC 296-24-10203). The State's submissions were adopted on January 11, 1990, with an effective date of February 26, 1990, under Washington Administrative Order 89-20.

The State's standards were initiated to comply with Washington State House Bill 1711 which requires enhanced security for employees of retail businesses that are open late at night by requiring employers to develop crime prevention educational programs, to provide signs for posting on doors and windows, i.e., "Time Lock Safe—Clerk Cannot Open", and to provide adequate exterior lighting. They have been added to the State's accident prevention program requirements imposed pursuant

to WAC 296-24-040 which OSHA previously approved. There are no existing OSHA rules which are comparable to these Washington standards.

B. Issues for Determination

The Washington amendments and standards in question are now under review by the Assistant Secretary to determine whether they meet the requirements of section 18(c)(2) of the Act and 29 CFR Parts 1902 and 1953. Public comment is being sought by OSHA on the following issues.

"At least as effective" requirement

Washington's amendments to the Multi-Piece/Single Piece Rim Wheels Standard and the Nonionizing Radiation Standard, and the Washington standards on Field Sanitation, Air Contaminants, Crane or Derrick Suspended Personnel Platforms, and Hearing Conservation are comparable to the Federal final rule at 29 CFR 1910.177(a)(2), Multi-Piece/Single Piece Rim Wheels, the Federal final rule at 29 CFR 1910.97, Nonionizing Radiation; the Federal final rule at 29 CFR 1928.110, Field Sanitation; the Federal final rule at 29 CFR 1910.1000, Air Contaminant; the Federal final rule at 29 CFR 1926.550(g), Crane or Derrick Suspended Personnel Platforms; and the Federal final rule at 29 CFR 1910.95(c)-(p), Occupational Noise Exposure respectively. OSHA has evaluated the State's requirements in comparison to these respective OSHA standards requirements and to enforcement policy and has preliminarily determined that the State's standards and State's amendments in question meet the "at least as effective" criterion on section 18(c)(2) of the Occupational Safety and Health Act. However, public comment on these issues is solicited for OSHA's consideration in its final decision on whether or not to approve these Washington standards and amendments.

There are no equivalent Federal standards applicable to the Washington State standards for Crime Prevention Requirements for Late Night Retail Establishment (WAC 296-24-102 and WAC 296-24-10203). Therefore, OSHA has evaluated the State's requirements in comparison to OSHA's general standards requirements and to enforcement policy and has preliminarily determined that the State standards in question meet the "at least as effective" criterion at Section 18(c)(2) of the Occupational Safety and Health Act. However, public comment on this issue is solicited for OSHA's

consideration in its final decision on whether or not to approve these Washington standards.

Product clause requirement

OSHA is also seeking through this notice public comment as to whether the Washington standards and amendments:

- (a) Are applicable to products which are distributed or used in interstate commerce;
- (b) If so, whether they are required by compelling local conditions; and
- (c) Unduly burden interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to the issues described above. These comments must be postmarked on or before December 28, 1992, and submitted in quadruplicate to the Director, Federal-State Operations, Room N-3700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments, and requests submitted concerning these standards and will therefore publish notice of the decision approving or disapproving them.

D. Location of Supplement for Inspection and Copying

A copy of Washington's standards and amendments applicable to Multi-Piece/Single Piece Rim Wheels, Nonionizing Radiation, Field Sanitation, Air Contaminants, Crane or Derrick Suspended Personnel Platforms, Hearing Conservation, and Crime Prevention Requirements for Late Night Retail Establishments, along with approved State provisions for adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 1111 Third Avenue, suite 715, Seattle, Washington 98101-3212; Washington Department of Labor and Industries, 7273 Linderson Way, SW., Tumwater, Washington 98502; Office of the Director, Federal-State Operations, U.S. Department of Labor-OSHA, room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92-28799 Filed 11-25-92; 8:45 am]

BILLING CODE 4510-26-M

LIBRARY OF CONGRESS

National Film Preservation Board

Request for Information and Notice of Hearing; Study on the Current State of Film Preservation

AGENCY: National Film Preservation Board, Library of Congress.

ACTION: Notice of inquiry; notice of hearing.

SUMMARY: This Notice of Inquiry and Notice of Hearing advises the public that the Librarian of Congress, in consultation with the National Film Preservation Board of the Library of Congress, is conducting a study on the current state of motion picture preservation and restoration in the United States. This study is being prepared pursuant to Public Law 102-307, The National Film Preservation Act of 1992, 106 Stat. 264. Section 203 (2 USC 179a) of the legislation requires the Librarian to complete this study and submit it to Congress by June 26, 1993. This Notice of Inquiry is intended to elicit public comments to complete this study. This notice invites comments and information that will assist the Librarian in understanding the issues involved in motion picture preservation nationwide. In addition, a Notice of Hearing advises the public that to complete this study, the Librarian will hold two public hearings in February 1993 in Los Angeles, CA, and Washington, DC. Groups or individuals interested in participating in these public hearings should contact the Library of Congress about submitting oral and written comments. The hearings and public comments requested in this Notice are intended to elicit information to assist the Librarian of Congress, in consultation with the National Film Preservation Board, with the completion of the study and the establishment of a comprehensive national film preservation program, to coordinate the efforts of film archivists, copyright owners, educators and historians, and others concerned with preserving America's film heritage.

The Library particularly invites comments from representatives of major and specialized film archives, institutional collections holding film

materials, commercial film studios and laboratories, stock footage libraries, and scholarly and professional organizations involved with the production, study, use or preservation of film.

DATES AND HEARINGS AND PUBLIC

COMMENTS: The two public hearings will be held: February 12, 1993 (Los Angeles); February 26, 1993 (Washington, DC).

All requests to testify orally must be made by January 15, 1993, and should clearly identify the person and/or organization desiring to comment. The Librarian of Congress will provide additional information regarding the location and time of these hearings in the near future.

Written statements for the hearings should be submitted, in camera-ready copy, by January 22, 1992.

Written submissions are also invited from persons or organizations unable to testify or attend the hearings for use in the study. All written comments or supplementary information should be received, in camera-ready copy, by March 15, 1992.

ADDRESSES: Ten copies of written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail: Library of Congress, M/B/RS Division, Washington, DC 20540, Attn: Steve Leggett.

If delivered by hand: Library of Congress, M/B/RS Division, 336 James Madison Memorial Building, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Steve Leggett, Library of Congress, M/B/RS Division, Washington, DC 20540. Telephone: (202) 707-5912; Facsimile: (202) 707-2371; or, Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8350.

SUPPLEMENTARY INFORMATION: The National Film Preservation Act of 1992 (Public Law 102-307) was signed into law by President Bush on June 26, 1992. It reauthorized the National Film Preservation Act of 1988 (Public Law 100-446) which expired on September 27, 1991. The 1992 reauthorization continues the activities of the Board for four years from the date of enactment, shifting the main focus of the Act to the development of a comprehensive national film preservation program.

The legislation in section 203 (2 U.S.C. 179a), charges the Librarian of Congress, in consultation with the National Film Preservation Board, to conduct this study and after completion of the study, to develop a coordinated national film preservation program. The objectives of

this program are (1) to coordinate activities to ensure that efforts of archivists and copyright owners, and others in the public and private sector, are effective and complementary; (2) to generate public awareness and support for these activities; and (3) to increase accessibility of films for educational purposes.

The newly created National Film Preservation Board, appointed by the Librarian, consists of the organizations represented on the original thirteen member Board with new additions: A cinematographer, a representative of the theater owners, a film archivist, and two at-large members—bringing the total Board to eighteen members. The new Board, which met for the first time in Washington, DC, on September 21–22, 1992, includes representatives from institutions and organizations specified in the Act, in addition to the two at-large members.

These institutions and organizations are: The Academy of Motion Picture Arts and Sciences; The Directors Guild of America; The Writers Guild of America; The National Society of Film Critics; The Society of Cinema Studies; The American Film Institute; The Department of Theater, Film and Television of the University of California at Los Angeles; The Department of Film and Television of New York University; The University Film and Video Association; The Motion Picture Association of America; The National Association of Broadcasters; The Alliance of Motion Picture and Television Producers; The Screen Actors Guild of America; The National Association of Theater Owners; The American Society of Cinematographers in conjunction with the International Photographers Guild; and United States members of the International Federation of Film Archives.

The initial step toward a national film preservation program is the preparation of a study on the current state of film preservation, to be submitted to Congress by June 26, 1993. "Film," for the purposes of this study, is defined as works originally fixed on film stock and excludes works fixed on videotape or other electronic formats. Therefore, the study will not concern itself with issues related to the preservation of video or television materials.

At the first meeting of the Board on September 21 and 22, the scope and methodology of the study were discussed, including the role of public hearings. It was agreed that the study would define the issues confronting American film preservation, including what has been accomplished to date, existing preservation standards,

priorities of major archives and commercial libraries, the geographic distribution of material requiring attention, the capacity of existing laboratory and storage facilities, and access to information on preservation activities. The Librarian is concentrating less, at this time, on obtaining information about new technical developments that might facilitate film preservation efforts.

The Librarian would appreciate comment and information from individuals and organizations about the current state of film preservation, toward the ultimate goal of establishing a coordinated national film preservation program.

The questions below, loosely divided for archival, industry, and educational respondents, are intended as suggestions to help frame specific comments about current preservation practices and problems.

Archival:

- *Collections.* What is the size and scope of your collection? Do you specialize in certain eras? formats? subject area? What particular preservation problems are presented by these materials?

- *Preservation Efforts.* Does your institution have an on-going preservation program? What are your major preservation accomplishments to date (specific information, such as titles and numbers of feet/reels preserved)? What organizational resources (full-time staff, equipment and funds) are currently devoted to preservation or restoration? To what extent are these activities externally funded? What criteria are used to set preservation priorities? What steps are taken to avoid duplicating preservation work done by other organizations? How do you prepare film for preservation or restoration? In what formats does your organization make preservation and viewing copies? To what degree do you use outside contractors or laboratories? What are your quality assurance standards? What are your most pressing preservation problems?

- *Facilities.* Under what physical conditions (of temperature, humidity, packaging, etc.) are preservation masters and reference copies stored?

- *Information and Access.* How much of your collection can be used by researchers? Are materials loaned for screening? Have you entered information about holdings onto computerized data-bases (if so, please describe the data-base)? How do you share information on holdings and preservation activities with other archives, commercial libraries, or

researchers? What measures are taken in your own preservation and access activities to protect the rights of copyright owners?

Industry:

- *Collection.* Do you maintain a film collection? If so, what is its size and scope? What particular preservation problems are presented by this material?

- *Preservation Efforts.* Does your company have an on-going preservation program? What are your major preservation accomplishments to date (specific information, such as titles and numbers of feet/reels preserved)? What organizational resources (full-time staff, equipment and funds) are currently devoted to preservation or restoration? What criteria are used to set preservation priorities? What steps are taken to avoid duplicating preservation work by other organizations? How do you prepare film for preservation or restoration? In what formats does your organization make preservation copies? To what degree do you use outside contractors or laboratories? What are your quality assurance standards? What are your most pressing preservation problems?

- *Copyright.* Have you encountered problems in locating or copying materials held by others for which you hold copyright? Has cooperation with outside archives or educational institutions contributed to copyright infringement problems? What new legal incentives might encourage film preservation? Encourage information sharing? How should public domain materials be treated?

- *Storage and Access.* Under what physical conditions (of temperature, humidity, packaging, etc.) are your films stored? How often are your films inspected? Do your older films circulate? Under what circumstances is information about your company's holdings made available to outside individuals or institutions? Have you entered information about your holdings onto computerized data-bases?

Educational:

- *Use and Availability.* In what formats (16mm, 35mm, videotape, etc.) do you use motion picture material in your research? in teaching? What problems have you encountered in locating and accessing needed materials?

- *Outreach.* How might the educational and museum communities foster public awareness of preservation issues and needs?

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m.

and 4 p.m., Monday through Friday, in room 336, James Madison Memorial Building, Library of Congress, First and Independence Avenue, SE., Washington, DC 20540.

Dated: November 21, 1992.

James H. Billington,
Librarian of Congress.

[FR Doc. 92-28798 Filed 11-25-92; 8:45 am]

BILLING CODE 1410-18-M

NATIONAL ENDOWMENT FOR THE ARTS

Media Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Documentary Prescreening #1 Section) to the National Council on the Arts will be held on December 15-16, 1992 from 9 a.m.-6:30 p.m. and December 17 from 9 a.m.-5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 15 from 9 a.m.-9:15 a.m. for opening remarks.

The remaining portions of this meeting on December 15 from 9:15 a.m.-6:30 p.m., December 16 from 9 a.m.-6:30 p.m., and December 17 from 9 a.m.-5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee

Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: November 20, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-28789 Filed 11-25-92; 8:45 am]

BILLING CODE 7537-01-M

Office of Public Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (State and Regional Section) will be held on December 14, 1992 from 9 a.m.-5:30 p.m. and December 15 from 9 a.m.-4:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics will include introductory remarks, application review, reauthorization discussion, and policy discussion.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: November 20, 1992.

Yvonne M. Sabine,

Director Panel Operations, National Endowment for the Arts.

[FR Doc. 92-28790 Filed 11-25-92; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science

Foundation announces the following meeting.

Date and Time: December 15, 1992; 8:30 a.m. to 5 p.m.

Place: Room 202, The Dean's Conference Room, W.C. Hogg Building, University of Texas at Austin, Austin, TX 78712.

Type of Meeting: Open.

Contact Person: Dr. John H. Hopps, Jr., Director, Division of Materials Research, rm. 408, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9794.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning the Materials Research Laboratories (MRL) and Materials Research Groups (MRG) activities.

Agenda: Review and assess activities in the MRL and MRG programs and recommend future direction for these activities.

Dated: November 23, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-28787 Filed 11-25-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure.

Date and Time: December 15, 1992; 8:30 a.m. to 5 p.m.

Place: Room 416, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mr. David A. Staudt, NSFNET Program, National Science Foundation, room 416, Washington, DC 20550 (202) 357-9717.

Purpose of Meeting: To Provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSFNET Connections Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 23, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-28788 Filed 11-25-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The NRC has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. Title of the information collection: 10 CFR Part 36, Licenses and Radiation Safety Requirements for Irradiators.
3. The form number if applicable: NRC Form 313.
4. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 5-year resubmittal of the information for renewal of the license. In addition, recordkeeping must be performed on an ongoing basis, and reports of accidents and other abnormal events must be reported on an as-necessary basis.
5. Who will be required or asked to report: All irradiators licensed by NRC or an Agreement State.
6. An estimate of the number of responses: 53.
7. An estimate of the total numbers of hours needed annually to complete the requirements or request: 47,250 hours.
8. The average annual burden per respondent: 150 hours for reporting and 480 hours for recordkeeping.
9. An indication of whether section 3504(h), Public Law 96-511 applies: Applicable.
10. Abstract: The Nuclear Regulatory Commission (NRC) is amending its regulations to establish a new 10 CFR part 36 containing radiation safety requirements for irradiators. The regulation establishes the application, reporting, and recordkeeping requirements for large irradiators. Applications are filed on NRC Form 313. Requirements for irradiators in the revised 10 CFR part 20 are being deleted because they are included in the new 10 CFR part 36.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L

Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150-0158, -0120, and -0014), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084. The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 19th day of November, 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92-28759 Filed 11-25-92; 8:45 am]

BILLING CODE 7590-01-M

Proposed Availability of FY 93 Funds for Financial Assistance (Grants) to Support Research at Educational Institutions and the Exchange of Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research, announces proposed availability of Fiscal Year (FY) 93 funds to support a limited number of research grants to educational institutions. These funds may also be used to support professional meetings and conferences for the exchange and transfer of research concepts and findings related to the safety of nuclear power production.

The FY 93 ceiling for research grants to educational institutions is approximately \$1,246,000.00. Of this amount, approximately \$730,000.00 will be available for new grants. Because of this limitation, proposed grant budgets should be restricted to about \$50,000.00 per year, with total project funding not exceeding \$100,000.00 over a two-year period. Proposals for new FY 93 research grants should be submitted between the date of this Notice and February 8, 1993. Proposals received after February 8, 1993 will be considered for FY 93 funding to the extent practicable.

ADDRESSES: Nuclear Regulatory Commission, ATTN: Grants Officer, Mail Stop P-841, Division of Contracts and Property Management, Office of Administration, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Leslie Mills or Dennis Turner on (301) 492-7054.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1992, the Nuclear Regulatory Commission (NRC) published in the *Federal Register* a notice that announced the proposed availability of FY 92 funds for the NRC Grant Program. The NRC is revising that notice to provide information on their grant program for FY 93.

Scope and Purpose of This Announcement

Pursuant to section 31.a and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit entities, state and local governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas, and concepts directed toward the NRC safety research program. The program includes, but is not limited to, support of professional meetings and conferences. In addition, the NRC has a limited amount for research grants to educational institutions (see topics below). The FY 93 ceiling for these grants is approximately \$1,246,000.00 with approximately \$730,000.00 of this amount available for new grants.

The purpose of this program is to stimulate research to provide a technological base for the safety assessment of system and subsystem technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety. In addition, each grant to an educational institution should contain elements which will potentially benefit the graduate research program of the institution, e.g., graduate student training.

The NRC encourages educational institutions to submit research grant proposals in the following areas:

1. Experiments and predictive modeling for thermal stratification, thermal, striping and flow-induced vibration in plant fluid systems.
2. Predictive modeling for boron transport and mixing.
3. Evaluation and modeling of adding cooling water to a degraded core during various stages of a severe accident.
4. Behavior of a hot hydrogen and steam mixture existing a break in the primary pressure boundary.

5. Modeling and experimentation on two-phase flow, interfacial relations, and heat transfer in reactor coolant systems. Experiments in modeling of passive heat transfer in natural circulation systems.
6. Evaluation of severe accident phenomena including: advanced modeling of the behavior of fluids, combustible gases and molten core materials in reactor primary systems (including metallic and ceramic crust formation and behavior) during severe accidents.
7. Interaction of reactor materials at very high temperature (e.g., core/concrete, core debris/vessel component interactions).
8. Methods for applying the growing pool of human performance data to nuclear power plant safety requirements.
9. Develop and codify pragmatic, statistically valid, methods for updating severe accident frequency and consequence analysis to reflect results of new operational, experimental, and calculation data.
10. Develop merit of methods and procedures for establishing the degree to which Probabilistic Risk Assessment (PRA) results compare with operational data and experience.
11. Development of methods to analyze and understand the aging effects, including irradiation damage effects, improved examination and testing methods for determining the condition of structures and components, and methods to assess residual lifetime of structures and components.
12. Development of nondestructive testing methods for in-situ evaluation of material properties and property degradation due to aging, such as fracture toughness and fatigue.
13. Development of nondestructive testing methods for detecting and quantifying corrosion on flaws of steel shell plate material sandwiched between thick concrete basemats and thick concrete floors.
14. Development of approaches to assure that corrosion damage has not significantly reduced the capacity of containment structures at nuclear power plants.
15. Development of methods of assuring integrity of the primary system, i.e., pressure vessels, piping steam generator tubing, such as advanced nondestructive testing techniques, continuous monitoring techniques and fracture analysis procedures.
16. Development of methods to establish and validate decommissioning criteria and effects of water chemistry on the primary system integrity.
17. Development and/or validation of models to explain the quaternary tectonics and seismicity of the Central and Eastern United States (East of 106 degrees W).
18. Development and/or validation of models to predict the propagation of seismic ground motions in the Central and Eastern United States or in a shallow soil column.
19. Investigations/studies including field observations of the paleoseismicity of the Central and Eastern United States.
20. Analysis of stress/strain distribution in the central and eastern United States; using the Global Positioning System (GPS) and other geodetic data, stress data, geological and geomorphic data and focal mechanisms.
21. Analyze fault mechanisms and earthquakes generation considering information on issues such as fault segmentation, stress distribution rate, recurrence, historic seismicity and paleoseismicity, etc.
22. Development of rapid bioassay analysis techniques for application to accidental internal exposure situation.
23. Natural analog studies of long-term stability of waste forms for low- and high-level nuclear waste.
24. Studies of volcanism or other descriptive processes or events in the Basin and Range.
25. Simplified modeling of thermohydrologic phenomena in high-level waste geological repositories.
26. Investigations of coupled tectonic-hydrological processes.
27. Development of a continuum rock mechanics approach for modeling unsaturated fractured rock.
28. Development of improved instrumentation or techniques for measuring activities, radiation dose, and dose rates, especially from small radioactive particles.
29. Development of methods for contamination prevention, measurement, and control.
30. Development of improved radiological air sampling methodology.
31. Research on the metabolism of radionuclides and their compounds relative to the calculation of internal dose.
32. Development of condensation model for systems codes such as RELAP5/MOD3 or TRAC-PFI/MOD2 for two cases: With and without condensable gases.
33. Investigation of radiation induced effects at the cellular/molecular levels emphasizing the reduction of uncertainties in risk of deleterious health effects from low-level radiation.
34. Validation of approaches to quantitatively assess human health effects of radiation, including new approaches to analyses of human epidemiological studies and experimental animal studies.
35. Studies of status, availability and accuracy of radiation measurements around and related to landfills, including establishment of baseline environmental dose rates.
36. Techniques to simplify the measurement of parameters used in pathway modeling.
37. Analysis of effectiveness of decontamination technologies for land, structures, recycling materials and equipment and their individual comparative costs to the environment.
38. Natural analog studies applicable to the assessment of long term performance of natural and engineered components of high-level and low-level radioactive waste disposal systems.
39. Studies of volcanism, tectonics, and other large scale geologic processes in the Basin and Range within the last ten million years (e.g., temporal and spatial history of volcanic events; volcanic hydro-thermalism; applications of seismic tomography).
40. Simplified modeling of thermohydrologic phenomena in high-level waste geological repositories.
41. Investigations of coupling between hydrologic, thermal, chemical, and/or mechanical processes as they effect the simulation of high-level waste repository performance.
42. Development of a continuum approach to modeling unsaturated, fractured rock.
43. Improved techniques for dating geologic formations and events for the period from one hundred to ten million years.
44. Studies of the thermodynamics and/or kinetics of the formation and alternation of solids controlling the release of HLW and LLW radionuclides.
45. Development of methods of calculating natural circulation jet/plume mixing in system level containment codes such as CONTAIN>
46. Development of methods to apply safety goal philosophy in allocation of public resources.
47. Development of methods to apply probabilistic risk/safety assessment information to address interdisciplinary safety problems in a consistent manner.
48. Advanced demographic models or statistical methods to predict population density and distribution around future power reactor sites.
49. Quality checking or enhancement of selected nuclear data in the

Evaluated Nuclear Data File B (ENDF/B).

50. Evaluation of severe accident phenomena (e.g. external cooling of reactor vessel) associated with advanced light water reactor designs (AP-600, SBWR).

51. Modeling and experimentation on transport and mixing of soluble boron under natural circulation condition.

52. Investigation of the genetics, induction and expression of human or animal DNA repair mechanisms in response to low dose rate, low LET, ionizing radiation.

Eligible Applicants

Educational institutions, nonprofit entities, State and Local governments, and professional societies are eligible to apply for a grant under this announcement.

Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of the work performed. Surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities will not be funded by a grant. Applicants requesting support for work which has a direct regulatory application should submit their requests as an unsolicited proposal for consideration as a contract rather than a grant.

1. The primary purpose of NRC grants is to support the development of knowledge or understanding of the subject or phenomena under study.

2. The exact course of the work and its outcome are usually not defined precisely, and specific points in time for achievement of significant results need not be specified.

3. The NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided

4. Meaningful technical reports (as distinguished from Semi Annual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

5. Simplicity and economy in execution and administration are mutually desirable.

Proposal Format

Proposals should be concise and provide a thorough understanding of the proposed project. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A-102 (Revised), Paragraph 6.c). Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated in OMB Circular A-110, (Attachment M).

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. *Cover Page.* The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal.—To include the term "research," "study," "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates for Conferences,

Symposium, Workshop, etc.;

Names of Principal Researchers or Participants;

Total Cost of Proposal; (Identify Cost by Fiscal Year)

Period of Proposal;

Organization or Institution and Department;

Required Signatures:

Principal Participants:

Name: _____

Date: _____

Address: _____

Telephone No.: _____

Required Organization Approval:

Name: _____

Date: _____

Address: _____

Telephone No.: _____

Organization Financial Officer:

Name: _____

Date: _____

Address: _____

Telephone No.: _____

2. *Project Description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding. Applicants must identify other possible sources of financial support for a particular project, and list those sources from which financial support has been or will be requested

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) *Project Goals and Objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project Outline.* The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) *Project Benefits.* The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) *Project Management.* The proposal should describe the physical facilities required for the conduct of project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project Costs.* Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A-122. Educational institutions shall adhere to the cost principles set forth in OMB Circular A-21, and state and local government shall adhere to the cost principles set forth in OMB Circular A-87.

The proposal must provide a detailed schedule of project costs, identifying in particular—

(1) *Salaries*—in proportion to the time or effort directly related to the project;

(2) *Equipment* (rental only);

(3) *Travel and Per Diem/Subsistence* in relation to the project;

(4) *Publication Costs;*

(5) *Other Direct Costs* (specify)—e.g., supplies or registration fees;

Note: Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) *Indirect Costs* (attached negotiated agreement/cost allocation plan); and

(7) *Supporting Documentation.* The supporting documentation should contain any additional information that will strengthen the proposal.

Proposal Submission and Deadline

This notice is valid for Federal Government Fiscal Year 93 (October 1, 1992 to September 30, 1993). Potential grantees are advised, however, that due to the limited funding available for new research grants to educational institutions, such proposals received

after February 8, 1993, will be considered for FY93 funding to the extent practicable.

Funds

For Fiscal Year 93, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, anticipates making a total of approximately \$1,246,000.00 available for funding research grants to educational institutions. Of this amount, approximately \$730,000.00 will be available for new research grants in FY 93. Because of this limitation, proposed grant budgets should be restricted to about \$50,000.00 per year, with total project funding not exceeding \$100,000.00 over a period of two years.

Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for research projects will employ the following criteria. No level of importance is implied by the order in which these criteria are listed.

1. Adequacy of the research design.
2. Scientific significance of proposal.
3. Technical adequacy of the investigators and their institutional base.
4. Relevance to a research area(s) described above.
5. Reasonableness of estimated cost in relation to the work to be performed and anticipated result.
6. Potential benefit of the project to the overall benefit of the institution's graduate research program.

Evaluation of proposals for professional meetings, conferences, symposia, etc., will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge.
2. Clarity of statement of objectives, methods, and anticipated results.
3. Range of issues covered by the meeting agenda.
4. Qualifications and experience of project speakers.
5. Reasonableness of estimated cost in relation to anticipated results.

Disposition of Proposals

Notification of award will be made by the Grants Officer, and organizations whose proposals are unsuccessful will be so advised.

Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to (Grant application packages, Standard Form 424, must be requested in writing): U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Mail Stop P-841, Office of Administration, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration, Mail Stop P-841, 7920 Norfolk Avenue, Bethesda, MD 20814.

Note: Upon delivery of the application to the NRC guard desk (at the above address), the guard should be requested to telephone the Division of Contracts and Property Management (Extension 27054) for a pick-up of the application.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Bethesda, MD this 19th day of November, 1992.

For the U.S. Nuclear Regulatory Commission,
Dennis Turner,

Grants Officer, Division of Contracts and Property Management, Office of Administration.

[FR Doc. 92-28758 Filed 11-25-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2223b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 9-12, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on October 26, 1992.

Wednesday, December 9, 1992

8:30 a.m.-8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. The Committee will discuss priorities for preparation of reports during this session.

8:45 a.m.-12 Noon: Station Blackout Rule (Open)—The Committee will review and comment on the proposed final amendment to the Station Blackout Rule (10 CFR 50.63) and the associated Regulatory Guide 1.9, Rev. 3, regarding the reliability of diesel

generators. Representatives of the nuclear industry will participate, as appropriate.

1 p.m.-2 p.m.: Technical Specifications Improvement Program (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the status of the NRC staff's work on the technical specifications improvement program. Representatives of the nuclear industry will participate, as appropriate.

2 p.m.-2:45 p.m.: Advanced Boiling Water Reactor Design (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the status of the staff's review of the ABWR design and related matters.

Thursday, December 10, 1992

8:30 a.m.-10 a.m.: River Bend Reliability Monitoring Program (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the Gulf State Utilities (licensee) regarding the reliability monitoring program that is being used at the River Bend Nuclear Plant to improve the effectiveness of the maintenance program. Representatives of the NRC staff will participate, as appropriate. Portions of this session may be closed as necessary to discuss Proprietary Information related to this matter.

10:15 a.m.-11:15 a.m.: Petition for Rulemaking—Protection Against Lightning and Electrical Transients for Nuclear Power Plants (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the status of the staff's review of a Petition for Rulemaking to amend the NRC rules and regulations to add lightning induced and other electrical transients to the list of phenomena that licensed nuclear plants must safely accommodate.

11:15 a.m.-12 Noon: Future ACRS Activities (Open)—The Committee will discuss the report of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee.

1:30 p.m.-2:30 p.m.: Proposed Resolution of Generic Issue 120, "Online Testability of Protection Systems" (Open)—The Committee will review and comment on the NRC staff's proposed resolution of Generic Issue 120. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

2:45 p.m.-3:30 p.m.: Activities of ACRS Subcommittees and Members (Open)—The Committee will hear reports and hold discussions of ACRS Subcommittee activity on assigned topics, including the conduct of Committee activities by the Planning and Procedures Subcommittee and the NRC Senior Management Meeting on the Organizational Factors Research Program.

3:30 p.m.-4 p.m.: Election of ACRS Officers (Open/Closed)—The Committee will select its Officers for Calendar Year 1993. Portions of this session will be closed, as appropriate, to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

- 4 a.m.-5 p.m.: *Appointment of New Members (Open/Closed)*—The Committee will discuss the qualifications of candidates proposed for appointment to the Committee. Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.
- 5 p.m.-6 p.m.: *Preparation of ACRS Reports (Open)*—The Committee will discuss proposed reports regarding items considered during this meeting.

Friday, December 11, 1992

- 8:30 a.m.-10:45 a.m.: *Meeting with the Director, Office of Nuclear Regulatory Research (Open/Closed)*—The Committee will hear a briefing and hold discussions on the NRC's safety research program, including the impact of the budget reduction proposed by the Office of Management and Budget on specific existing and proposed research contracts. Portions of this session will be closed as necessary to discuss information the premature disclosure of which would be likely to significantly frustrate proposed agency action.
- 11 a.m.-12 Noon: *Preparation for Meeting with the NRC Commissioners (Open)*—The Committee will discuss topics of mutual interest with the NRC Commissioners.
- 1:30 a.m.-3 p.m.: *Meeting with the NRC Commissioners (Open)*—The Committee will meet with the NRC Commissioners to discuss topics of mutual interest.
- 3:30-6 p.m.: *Preparation of ACRS Reports (Open)*—The Committee will discuss proposed ACRS reports to the NRC regarding items considered during this meeting.

Saturday, December 12, 1992

- 8:30 a.m.-1:30 p.m.: *Preparation of ACRS Reports (Open)*—The Committee will discuss proposed Committee reports regarding items considered during this meeting.
- 1:30 p.m.-2:30 p.m.: *Miscellaneous (Open)*—The Committee will discuss matters considered but not completed at previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be

limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered per 5 U.S.C. 552(c)(4), information the premature disclosure of which would be likely to significantly frustrate proposed agency action per 5 U.S.C. 552b(c)(9)(B), and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301-492-8049), between 8 a.m. and 4:30 p.m. e.s.t.

Dated: November 20, 1992.

Andrew L. Bates,

Acting Committee Management Officer.

[FR Doc. 92-28713 Filed 11-25-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Units 1 and 2); Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Sandra Long Dow and R. Micky Dow (Petitioners) dated May 19, 1992, regarding the Comanche Peak Steam Electric Station, Units 1 and 2.

The Petitioners requested that the Commission order the immediate shutdown of Unit 1 of the Comanche Peak Steam Electric Station and institute a proceeding to modify, suspend, or revoke the license held by the Texas Utilities Electric Company (TU Electric or the licensee) for Unit 1. The Petitioners also requested the

Commission to suspend any consideration of extending or modifying the construction permit for Unit 2 of the facility until resolving any proceeding on the license for Unit 1.

Petitioners asserted as a basis for their Motion that the licensee failed to demonstrate the necessary character and capability that are the primary factors to be considered in granting a license, and has shown a "downward spiral" in violations and reportable incidents. Petitioners also assert wrongdoing by the NRC Region IV staff. To support this general assertion, the Petitioners alleged that numerous specific incidents occurred since November 1991 including:

- (1) 100 mile-per-hour winds in the access tunnel between Units 1 and 2 resulted in an employee being blown into a radiation area;
- (2) Resin was spilled into the core;
- (3) A "hot" valve was cut in two causing a radiation release and exposure to several individuals;
- (4) 26 documented "reportable incidents", numerous areas showing concern by Region IV, and at least 6 reactor trips;
- (5) The NRC proposed fines for violations nearing \$100,000 for 1992;
- (6) The spent fuel pool was without cooling water for approximately 20 hours causing an abnormal rise in temperature;
- (7) A photograph showing control room personnel asleep is widely circulated in the plant; and
- (8) The license failed to label and mislabeled pressure valves and limit switches.

The Director of the Office of Nuclear Reactor Regulation has decided to deny the Petition. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206," (DD-92-06) which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Comanche Peak Steam Electric Station, at the University of Texas at Arlington Library, Government Publication/Maps 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's Regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 19th day of November 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-28760 Filed 11-25-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form RI 25-15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25-15, Survey of Student's Eligibility to Receive Benefits, is used to collect information from students regarding marital status, current full-time school attendance and future plans for full-time school attendance to verify that the student has continued the school attendance previously certified to OPM on RI 25-14, Self-Certification of Full-Time School Attendance.

Approximately 12,000 RI 25-15 forms are completed annually. The form requires approximately 15 minutes to complete. The annual burden is 3,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received by December 28, 1992.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415 and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION

CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,
Acting Director.

[FR Doc. 92-28726 Filed 11-25-92; 8:45 am]

BILLING CODE 6325-01-M

Notice of Request for Approval of RI 78-11; Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 78-11, Medicare Part B Certification, collects information from annuitants, their spouses, and survivor annuitants who are eligible under the Retired Federal Employee Health Benefits Program for a Government contribution toward the cost of part B of Medicare.

Approximately 300 RI 78-11 forms are completed annually. The form requires approximately 10 minutes to complete. The annual burden is 50 hours.

For copies of this proposal, call C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received by December 28, 1992.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E. Street, NW., room 3349 Washington, DC 20415; and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION

CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,
Acting Director.

[FR Doc. 92-28727 Filed 11-25-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

Order of Suspension of Trading; Ceramics Technology, Inc.

November 23, 1992.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ceramics Technology, Inc. ("Ceramics Tech")

because of (1) questions regarding the accuracy of assertions by Ceramics Tech in documents sent to the National Association of Securities Dealers, Inc., market-makers of the stock of Ceramics Tech., other broker-dealers, and to investors, and by others, that Ceramics Tech owns a manufacturing plant in Richmond Heights, Ohio, which is the single largest asset reported by the company, (2) questions concerning the accuracy and valuation of certain purported assets included in financial statements of Ceramics Tech, and (3) questions concerning the accuracy of biographical information disseminated by Ceramics Tech, relating to Ceramics Tech's Chariman.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, November 23, 1992 through 11:59 p.m. EST, on December 7, 1992.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-28801 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31477; File No. SR-DGOC-92-02]

Self-Regulatory Organizations; Delta Government Options Corp.; Notice of Proposed Rule Change Relating to the Definition of Expiration Date

November 18, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 23, 1992, Delta Government Options Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Delta. The proposal was amended on November 12, 1992.²

¹ 15 U.S.C. 78s(b)(1) (1988).

² The amendment made minor, nonsubstantive changes to the proposal. Letter from Robert C. Mendelson, Partner, Morgan, Lewis & Bockius, to Richard C. Strasser, Attorney, Division of Market Regulation, Commission (November 12, 1992).

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify the definition of Expiration Date to include "any Business Day within sixty calendar days from the Business Day in which the writing of the Option Contract occurs."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Delta included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal rule change. The text of these statements may be examined at the places specified in Item IV below. Delta has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to respond to Participants' requests to afford them the opportunity to select expiration dates which match more precisely the tenor of other financial contracts developed in the over-the-counter ("OTC") market and other trading environments. By affording Participants a larger spectrum of expiration dates, Delta will be able to permit its Participants to gravitate naturally toward those expiration dates each Participant deems the most suited to its individual trading needs. Therefore, Delta is amending the definition of Expiration Date, set forth in Article I of its Procedures, to provide, "In addition, the Expiration Date may also be any Business Day within sixty calendar days from the Business Day in which the writing of the Option Contract occurs."

The proposed rule change is consistent with the requirements of the Act and particularly with section 17A of the Act because the proposed rule change will permit more utilization of the Delta System by those Participants who prefer to trade in options for hedging purposes or speculation. In particular, the tailoring of the options expiration on the basis proposed by Delta will afford Participants additional

flexibility to adjust option duration in relation to their overall treasury security portfolios. The proposal, moreover, will enable Participants to submit for processing at Delta OTC treasury option trades that could not otherwise be submitted because their stated expiration dates are not currently available through Delta.

B. Self-Regulatory Organization's Statement on Burden on Competition

Delta does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of Delta. All submissions should refer to the file

number SR-DGOC-92-02 and should be submitted by December 18, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-28734 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31476; File No. SR-DTC-92-15]

Self-Regulatory Organization; The Depository Trust Co.; Notice of Filing of Proposed Rule Change Relating to Clarifications in the FAST Program Balance Certificate Agreement

November 18, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 23, 1992, the Depository Trust Co. ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-DTC-92-15) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of clarifications of provisions of the Balance Certificate Agreement (the "Agreement") used in DTC's FAST (Fas' Automated Securities Transfer) program to the effect that (i) the confirmation by a FAST Transfer Agent of the identity of the securities issue and the amount of those securities evidenced by a Balance Certificate retained by the FAST Transfer Agent under the FAST program may be effected using DTC's Participant Terminal System ("PTS"); and (ii) the certification to DTC of insurance maintained by the FAST Transfer Agent to cover losses of securities held under the Agreement may be provided by the FAST Transfer Agent's insurance broker or agent upon DTC's request.

The proposed rule change also would clarify analogous provisions of the Commercial paper Certificate

³ 17 CFR 200.30-3(a)(12) (1992)

Agreement used in DTC's Commercial paper program.¹

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify provisions of the Balance Certificate Agreement used in DTC's FAST program, as well as analogous provisions of the Commercial Paper Certificate Agreement used in DTC's Commercial Paper program. Under the FAST program, DTC leaves securities in the custody of the issuer's transfer agent in the form of Balance Certificates registered in the name of Cede & Co., DTC's nominee. The obligations of the FAST Transfer Agent to DTC are set forth in the Agreement, which is executed by the Fast Transfer Agent and DTC. The form of the Agreement in use since the FAST program was first approved by the Commission in 1977² provides, in part, that the Agreement relates to the custody of balance certificates evidencing the record ownership by Cede & Co. of each issue for which the FAST Transfer Agent acts as transfer agent and that the Agreement may be amended in writing from time to time by the mutual agreement of the parties. The Agreement further provides that the FAST Transfer Agent shall confirm to DTC in writing the number of shares or units or the amount of obligations evidenced by each Balance Certificate, on a daily basis or other periodic basis, as DTC may reasonably request.

The proposed rule change will enable the FAST Transfer Agent and DTC to confirm with greater efficiency the identity of the issues covered by the Agreement and the amount of securities evidenced by each Balance Certificate

by means of electronic communications through PTS rather than by the submission of hardcopy (i.e., paper) forms.

The Agreement also provides in pertinent part that the FAST Transfer Agent must maintain an insurance policy in the form of a Bankers Blanket Bond Standard Form 24, or similar coverage, in a specific amount and must arrange each year for its insurance underwriter to certify to DTC the amount of such insurance. The proposed rule change will relieve FAST Transfer Agents of certain administrative burdens associated with this requirement. DTC understands that the Transfer Agent can obtain the required certification more easily and promptly from its own insurance broker rather than from the insurer. Also, by requiring submission of the certification only in response to DTC's request, FAST Transfer Agents can avoid establishing internal procedures for assuring that such certifications are automatically obtained and sent out. DTC plans to make such requests annually.

The proposed rule change is consistent with section 17A(b)(3)(A) of the Act in that it will facilitate the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were not solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR-DTC-92-15 and should be submitted by December 18, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28732 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31488; International Series Release No. 492; File No. SR-OCC-92-18]

Self-Regulatory Organizations; The Options Clearing Corp.; Order Approving a Proposed Rule Change Relating to an Agreement for Services With International Clearing Systems, Inc.

November 19, 1992.

On July 21, 1992, The Options Clearing Corp. ("OCC") filed a proposed rule change (File No. SR-OCC-92-18) with the Securities Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on September 10, 1992, to solicit comments from interested persons.² No comments

¹ Securities Exchange Act Release No. 30986 (July 31, 1992).

² Securities Exchange Act Release No. 13342 (March 16, 1977).

¹ 15 U.S.C. § 78s(b) (1988).

² Securities Exchange Act Release No. 31173, International Series Release No. 454 (September 10, 1992), 57 FR 43043.

were received by the Commission. As discussed below, this Order approves the proposal.

I. Description of the Proposal

OCC's proposed rule change will permit OCC to enter into an Agreement for Services ("Agreement") with its wholly-owned subsidiary, International Clearing Systems, Inc. ("ICSI"). Pursuant to the Agreement, OCC will provide administrative and operational services related to ICSI's bilateral netting of foreign exchange transactions for clearing houses or banking entities that process, clear, and settle foreign currency transactions.

On October 12, 1988, the Commission issued an order³ authorizing OCC to invest excess funds in ICSI for the development of data processing and communications services for foreign exchange transactions and related collateral and settlement obligations. The terms of that Order required OCC to submit to the Commission any agreement between OCC and ICSI for review under section 19 of the Act.⁴ OCC intends to perform facilities management services, largely administrative in nature, for ICSI. OCC, in its sole discretion, will determine which of its facilities and personnel and what percentage of their time will be devoted to the affairs of ICSI.

After ICSI is operational, it is intended to be self-supporting and to obtain revenues by charging fees to its users. Because OCC and ICSI are structured as separate corporations, OCC will not be legally responsible for ICSI's future debts and liabilities. OCC has represented that it has taken appropriate measures to ensure that its involvement with ICSI does not adversely affect OCC's ability to conduct its clearance and settlement activities or to satisfy its statutory obligations under section 17A of the Act.⁵

II. Discussion

The Commission believes that this proposal is consistent with the Act. In making such a determination, the Commission must find that the proposed OCC action is consistent with the requirements of section 17A of the Act⁶ that, among other things, a registered clearing agency is organized and has the capacity (1) to safeguard securities and funds in its custody or control or for

which it is responsible and (2) facilitate the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that, to the extent a registered clearing agency's subsidiary engages in activities outside of the Commission's direct oversight, the Commission's responsibility generally is to assure that those activities do not undermine the clearing agency's ability to conduct its securities clearance and settlement activities in a manner that is consistent with the Act. The Commission believes that OCC has taken appropriate measures to ensure that its involvement with ICSI does not adversely affect OCC's ability to conduct its clearance and settlement activities or to satisfy its statutory obligations under the Act.⁷ Because OCC and ICSI are structured as separate corporations, OCC generally should be insulated from any potential liabilities arising from ICSI's operations.

The operation of ICSI also may provide OCC and its members with indirect benefits. ICSI is designed to recover its costs and to make a profit, so it may provide OCC with a return on OCC's investment that could be used to fulfill OCC's responsibilities under Section 17A of the Act.⁸ Moreover, existing OCC members are expected to use ICSI to handle more efficiently their foreign currency trade operations.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with the requirements of the Act, specifically section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,⁹ that OCC's proposed rule change (SR-OCC-92-18) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-28729 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31467; File No. SR-OCC-92-30]

Self-Regulatory Organization; The Options Clearing Corp.; Notice of Filing of a Proposed Rule Change Relating to the Conversion of the Options Clearing Corp.'s Current Batch Escrow Receipt Depository System to an On-Line System

November 16, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 22, 1992, The Options Clearing Corp. ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would convert OCC's current batch Escrow Receipt Depository ("ERD") system to an on-line system and allow index option escrow receipts to be processed through the proposed on-line ERD system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC including statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purposes of the proposed rule change are (i) to convert OCC's current batch Escrow Receipt Depository ("ERD") system to an on-line system and (ii) to allow index option escrow receipts to be processed through the proposed on-line ERD system. Secondary purposes of the proposed rule change are to conform OCC's Rules to

³ Securities Exchange Act Release No. 26171 (March 2, 1988), 53 FR 7616 [File No. SR-OCC-87-20]

⁴ 15 U.S.C. § 78s (1988).

⁵ 15 U.S.C. § 78q-1 (1988).

⁶ *Id.*

⁷ As with this proposal, for any future proposal to provide services for ICSI the Commission will obtain assurances from OCC that such proposal will not affect adversely OCC's operations or its ability to satisfy its statutory obligations.

⁸ 15 U.S.C. § 78q-1 (1988).

⁹ 15 U.S.C. § 78s(b)(2).

¹⁰ 17 CFR § 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

its actual practices with respect to the timing of the release of escrow deposits and to make clarifying and conforming changes in OCC's Rule relating to daily money settlement for short positions covered by escrow deposits.

1. Conversion of ERD to an On-Line System

The first purpose of the proposed rule change is to convert OCC's current batch ERD system to an on-line system. OCC's ERD system is an automated system for the processing of escrow activity. The ERD system was intended to eliminate the physical handling of escrow receipts and allow OCC's Clearing Members and participant banks to effect premium settlement in connection with escrow-related transactions through the facilities of OCC.

The current ERD system is a three-party (Clearing Member, ERD Bank, and OCC) multi-line entry and inventory escrow receipt system which operates as follows. An ERD Bank that desires to make escrow deposits with OCC for the accounts of its customers or to "roll over" existing escrow deposits to cover new short positions would do so by submitting to OCC multi-line escrow receipt forms covering an entire day's escrow deposit activity. The ERD Bank may specify on the deposit form the amount of premium payable to the customer's Clearing Member for settlement through OCC. A Clearing Member that desires to withdraw an escrow deposit (e.g., because the short position that it covered has been closed out) would do so in a similar manner. The Clearing Member would complete and submit to OCC a multi-entry form covering a full day's withdrawal activity and specifying, as to each withdrawal instruction, any premiums receivable from the bank that holds the escrow deposit. At the end of that business day, OCC inputs all of the escrow instructions that it has received into the ERD processing system via multiple batch procedures.

On the following business day, OCC delivers to each participating ERD Bank and to each Clearing Member a Pending Escrow Report summarizing the escrow deposit, rollover, and withdrawal instructions affecting such ERD Bank or Clearing Member from the previous business day. The parties receiving the Pending Escrow Report may "pend" or reject any instruction appearing on the Report. Pended instructions appear on the next day's Pending Escrow Report. Rejected instructions are deleted from the system.

On the following morning, an instruction that was neither pended nor

rejected is automatically entered into OCC's cash settlement system. At that time, the settlement accounts of the Clearing Member and the participating ERD Bank are charged or credited with the net premiums payable or receivable, as the case may be, in connection with escrow deposit activity. Therefore, from the time when a deposit instruction is submitted to OCC until the settlement of premium, the current ERD system is a three-day processing system.

OCC is proposing to convert the current batch ERD system to an on-line system through the use of its INTRACS Asset Custody Depository function. The conversion of the current ERD to an on-line system would improve ERD processing in several ways. First, the proposed on-line system would shorten the time from between customer pledge and settlement of premium. The proposed system would allow ERD Banks and Clearing Members to submit deposit, rollover, and withdrawal instructions directly into OCC's database via computer terminal. On-line transaction and inquiry reports would then be generated, listing all of the instructions that have been entered into the system. Those reports would be updated on a real-time basis throughout the business day. ERD Banks and Clearing Members would be able to review those on-line reports to determine whether a particular instruction has been approved by the ERD Bank or Clearing Member to which it was addressed.

Under the proposed system, all escrow instructions (with the exception of withdrawals without premium and deposits without premium, which are effected without the need for approval) must be approved or rejected by the ERD Bank or Clearing Member to which they are addressed on the same day on which they were entered at or before such time as OCC shall prescribe. Instructions that are not approved by such time as OCC shall prescribe on that same business day would be deleted by OCC from the ERD processing system. Such instructions would have to be reentered the following business day. Unlike the current batch ERD system, the proposed system would not permit instructions to be "pended" across business days.

The result of these changes is that the proposed on-line system would allow real time approval/denial of escrow activity with next day premium settlement. The processing time for an escrow deposit receipt would therefore be reduced from three business days to two business days.

In addition, converting ERD to an on-line system would allow OCC, its ERD

Banks, and Clearing Members to continue to move toward a paperless environment. Paper escrow receipts and ERD multi-entry input forms currently submitted to OCC for entries and corrections could eventually be eliminated as ERD Banks and Clearing Members begin submitting on-line escrow instructions. Furthermore, ERD Banks and Clearing Members would be given access to on-line reports that would be continually updated throughout the business day to provide a real-time inventory record. To facilitate audit trail print capability, ERD Banks and Clearing Members would be able to print hard copies of an escrow audit trail report (an on-line report which summarizes the daily escrow transactions of such Bank or Clearing Member) from a printer attached to their own computer terminals. Accordingly, the number of paper reports which OCC must produce and distribute on a daily basis would be substantially reduced.

The conversion of the batch ERD system to an on-line system would in no way compromise OCC's ability to safeguard the securities and funds subject to its control. OCC's current Rules with respect to ERD expiration processing and the release of escrow deposits would remain intact. In addition, each participating ERD Bank and Clearing Member would be given a user ID by OCC's Security Administration. Access to transactions and inquiry reports would be restricted to those authorized users. OCC would have "global" inquiry access to the reports of all Clearing Members and ERD Banks while Clearing Members and ERD Banks would have inquiry access to their own inventory items only. Furthermore, the proposed system has an on-line editing capability which would check for certain input errors such as an invalid Clearing Member number or option series. ERD Banks and Clearing Members could correct other input errors by reporting such errors to OCC. OCC would then cancel the erroneous transactions from the ERD processing system and input the correct data. Finally, approved transactions are not given effect until the system performs a successful excess/deficit check to ensure that the transaction does not place the Clearing Member into deficit.

OCC anticipates that the proposed on-line ERD system would eventually eliminate the current batch ERD system. However, during the transition period, both systems would be in operation. Accordingly, OCC's proposed rule change allows for the use of both the current batch system and the proposed

on-line system. The rules governing the batch ERD system have been renumbered to accommodate the addition of the on-line system. In addition, the names of forms referred to in the batch system rules have been changed to lower case letters in order to make such forms more generic. Furthermore, OCC has deleted certain obsolete language respecting escrow deposits for options on Treasury bills, certificates of deposit, and GNMA's which are not currently traded. Obsolete language respecting supplemental escrow deposit agreements, which were intended to govern escrow deposits consisting of Treasury bills, certificates of deposit, and GNMA's, has also been deleted. Language respecting the timing of the release of an escrow deposit in paragraph (a)(7) of Rule 613 (as renumbered) has been revised. (This change is further discussed below in Subsection 3 of this Item.) Finally, a provision has been added to the batch rules to prohibit the rollover of an escrow deposit after expiration of the option covered by the deposit. The provision was added in order to make what was previously an implicit practice explicit in the Rules.

The provisions of the proposed form of the On-Line Escrow Deposit Agreement between OCC and any bank wishing to become an on-line ERD bank are, in general, parallel to the provisions in proposed Rule 613(b).

2. Processing of Index Option Escrow Deposits Through the On-Line ERD Systems

The second purpose of the proposed changes is to allow index option escrow deposits to be processed through the proposed on-line ERD system. When OCC's batch ERD system was originally developed and implemented by OCC in 1981, index options were not yet in existence. Accordingly, OCC's Rule did not permit the processing of index option escrow deposits through the ERD system. After index options came into existence, demand for the ability to process index option escrow deposits through the ERD system was initially low. As a result, Rule 1801(d) was never modified. In the past year and a half, however, that demand has substantially increased. Accordingly, OCC is now proposing to revise Rule 1801(d) to allow for the processing of index option escrow deposits through the proposed on-line ERD system in accordance with the provisions of proposed Rule 613(d). Certain provisions of Rule 613(b) accordingly reflect that index option exercises have a shorter settlement period than equity option exercises.

3. Revision of Rules Relating to Releases of Escrow Deposits

OCC's rules currently permit escrow deposits to be established to cover short call stock option positions either through use of a stock option escrow receipt or through OCC's current batch ERD system. In the case of a deposit made via a stock option escrow receipt, Rule 610(k) currently provides that the deposit may be withdrawn after settlement of an exercise that is assigned to the covered short position. Similarly, in the case of a deposit made via the batch ERD system, Rule 613(g)(3) currently provides that OCC will release the escrow deposit on the morning of the settlement date for an exercise that is assigned to the covered short position. Rule 610(k) was revised to read as it currently does, and Rule 613(g)(3) was added to OCC's Rules in File No. SR-OCC-82-6, which was the filing in which OCC initially proposed the system which is referred to in this filing as the batch ERD system.²

Prior to the effectiveness of File No. SR-OCC-82-6, Rule 610 provided that on the business day following the assignment of an exercise to a converted stock option short position (i.e., on the second day following the exercise), OCC would collect margin on the account in which the position was carried without regard to the escrow deposit and after it had collected the margin would permit the deposit to be withdrawn. (This margin requirement is often referred to as "pop-up" margin requirement because it is required only from the second day of the five day exercise settlement period to the end of the exercise settlement period.) At the time that File No. SR-OCC-82-6 was filed, OCC believed that revising Rule 610 and implementing Rule 613 so that each Rule permitted OCC to maintain escrow deposits in effect throughout the five day exercise settlement period was appropriate because OCC's exercise settlement system had begun to utilize (and still utilizes) the continuous net settlement systems of correspondent clearing corporations. As a result, Clearing Members no longer needed actual access to the underlying securities on the exercise settlement date in order to make settlement, escrow deposits could be maintained in effect throughout the exercise settlement period, and the "pop-up" margin requirement could be eliminated.

In the course of developing the on-line ERD System and preparing new rules

describing that system, it has come to OCC's attention that, notwithstanding the approval of SR-OCC-82-6 in 1982, changes to OCC's system to reflect the revised escrow release rules were never implemented, and OCC's practices since 1982 in releasing stock option escrow deposits and collecting margin have, therefore, not reflected the revised rules. After reviewing the changes in release procedures described in File No. SR-OCC-82-6, OCC has concluded, first, that both its current release procedures and the release procedures described in File No. SR-OCC-82-6 are consistent with maintaining a sound and secure settlement system and, second, that the costs of implementing the changes proposed in File No. SR-OCC-82-6, for now at least, outweigh the benefits to Clearing Members of avoiding the three day "pop-up" margin requirement.³

Accordingly, OCC is proposing in this rule filing to make changes to Rule 610 and Rule 613(a)(7) (formerly Rule 613(g)) and to implement Rule 613(b)(7) so that these Rules are consistent with OCC's current practices in releasing stock option escrow deposits.⁴

4. Rule 503: Related Changes

Related changes are being made to Rule 503 to conform to the proposed changes in Rule 613. Specifically, the names of forms are being changed to lower case letters to make such forms more generic. In addition, a cross reference to Rule 613 is being modified to reflect the proposed renumbering of the subsections of Rule 613. Finally, language is being added to Rule 503 in order to clarify certain rights and obligations set forth in that Rule.

OCC believes the proposed rule change is consistent with section 17A of the Act, as amended,⁵ because it promotes the prompt and accurate settlement and clearance of securities transactions by substantially reducing the paperwork associated with the processing of escrow deposit activity and by providing a more efficient system for premium settlements between Clearing Members and participating banks.

³ This cost-benefit analysis may change if the on-line ERD system causes an increase in Clearing Member usage of escrow deposits. To its current knowledge, however, OCC has not received any Clearing Member complaint relating to the three day "pop-up" margin requirement in the last ten years.

⁴ Since index options have a one day or two day exercise settlement period (in the case of capped options subject to automatic exercise), the changes in timing of release of deposits described in the text above are not relevant for index option escrow deposits.

⁵ 15 U.S.C. 78q-1

² Securities Exchange Act Release No. 18844 (June 25, 1982) 47 FR 29046 (File No. SR-OCC-82-6) (order approving the implementation of the ERD program on a full-scale basis)

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-92-30 and should be submitted by December 18, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28736 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31473; File No. SR-NSCC-92-13]

Self-Regulatory Organizations; National Securities Clearing Corp.; Notice of Filing of a Proposed Rule Change to Provide for the Automation of Payments of Commissions Associated With Mutual Fund Transactions

November 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 22, 1992, the National Securities Clearing Corp., ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The primary purpose of the proposed rule change is to permit NSCC to add a new mutual fund service that will provide for the automation of payments of commissions owed in respect of mutual fund transactions. The proposed rule change also makes several technical modifications to change the name of Rule 52 and to codify existing practices.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The Text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

The primary purpose of the rule change is to permit the payment of commissions owed in respect of mutual fund transactions in the same manner as dividend amounts are paid under Networking.² It will also permit Settling Members to advise mutual funds of changes that the funds need to know about relative to commission payments.

Each day a Fund Member will be able to transmit commission debit date to NSCC. The Fund Member must specify the commission amounts to be debited to its account the next day. If the next day is a New York bank holiday, the payment will be debited on the next day banks in New York are open for business. Commission payments, like dividend payments, will be made by Fund Members in federal funds.

Each day Settling Members will also be able to transmit to Fund Members information relative to commission payouts. For example, the Settling Member will be able to notify a Fund Member if a registered representative works out of a different branch location. This transmittal of date will operate the same way that customer account data is transmitted under Networking.

The proposed rule change also includes language which codifies a currently utilized correction process with respect to dividend payments. A similar capability has also been incorporated into the Commission Settlement subsection. In the event a Fund Member submits incorrect data (whether it be dividend or commission data), the Fund Member may submit correction information. If the correction results in the Fund Member being in a credit position, to the extent not deleted, such amounts are included with other amounts, and payment is made in accordance with normal settlement practices. If the correction results in a Settling Member being a debit position, NSCC gives such Settling Member the ability to delete such correction, and such amounts are paid outside the system. If the correction is not deleted, the amount is included with the Settling Member's other settlement amounts.

The proposed rule change also makes a number of technical changes. The

² Networking is a service which centralizes and standardizes date communications for the exchange of customer account level activity information between broker-dealers and mutual fund processors. For a description of Networking refer to Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544 (File No. SR-NSCC-88-08), (order approving Networking)

⁶ 17 CFR 200.30-3(a)(12) (1991).

¹ 15 U.S.C. 78s (1988).

name of Rule 52 has been changed to reflect the myriad of mutual fund services offered. A Settling Member may take advantage of Fund/Serv, Networking, or the Commission service independently or in conjunction with one another. Accordingly, under the Rule 52 heading, each mutual fund service that can be accessed by Participants is under a different subheading. Should NSCC offer additional mutual fund services in the future, they will also be set forth under a new subheading in Rule 52.

The proposed rule change also redefines "Fund/Serv Broker-Dealer" as "Mutual Fund/Serv Broker-Dealer" to reflect that such entity may use any Rule 52 service. It also includes within the definition of "Fund Member" a reference to the fact that a "Fund Member" was previously referred to as a "Fund/Serv Member" to ease cross referencing this term which is used in the Fund Member's Agreement signed by mutual funds. Further, most references throughout the rules to the Fund/Serv Service are being replaced with the reference to Mutual Fund Services to accommodate the Rule 52 name change referred to above. The exception to this is limited to subsection A where the continued reference to Fund/Serv is correct.

The rule change also sets forth the fees to be charged for the Mutual Fund Commission Settlement service. NSCC will implement these fees effective January 1, 1993, for billing in February 1993.

Since the proposed rule change will facilitate the prompt and accurate clearance and settlement of transactions it is consistent with section 17A of the Act³ and the Rules and Regulations promulgated thereunder.

B. Self-Regulatory Organization's Statement on the Burden on Competition

NSCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Relieved From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal**

Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, view, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR-NSCC-92-13 and should be submitted by December 18, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28733 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31491; File No. SR-MBS-92-03]

Self-Regulatory Organizations; MBS Clearing Corp.; Notice of Filing of Proposed Rule Change Relating to Revised Provisions for Deposits of Securities and Revised Standards for Letter of Credit Issuers

November 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice

is hereby given that on July 30, 1992, the MBS Clearing Corp. ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MBS-92-03) as described in Items I, II, and III below, which items have been prepared by MBS, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBS proposes to amend the MBS Rules at Article IV (Participants Fund), Rule 2 (Daily Market Margin Differential Deposits to Participants Fund), Sections 6 (Forms of Deposits) and 7 (Special Provisions Relating to Deposits of Cash). MBS states that the proposed rule change would revise and clarify its Article IV regarding: (1) Acceptable deposits of securities, and (2) standards for letter-of-credit issuers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify MBS's rules regarding acceptable deposits of debt securities and letters of credit to MBS's Participants Fund ("Fund"). Currently, MBS Rules, Article IV, Rule 2, Section 6 require deposits of debt securities to the Fund to be valued at the lesser of their par value or 100% of their current market value. MBS believes that this generally is not an appropriate valuation formula for securities that are direct obligations of the United States because some Treasury securities (i.e., certain Treasury bonds) are subject to being called. In fact, MBS does not accept deposits of Treasury securities that are within six months of their callable period.

³ 15 U.S.C. 78q-1 (1988).

¹ 15 U.S.C. § 78s(b)(1) (1988).

MBS believes that it should value Treasury securities for purposes of the Fund only on a Current Market Value basis. MBS also believes that the proposed rule change will help clarify distinctions in how different deposits of securities will be valued.

Additionally, existing MBS Rules, Article IV, Rule 2, Section 7(b) states that MBS is not required to accept a letter of credit as a deposit if a result of such acceptance, more than 25% of all Market Margin Differential Deposits to the Fund (including deposits other than letters of credit) would consist of letters of credit by one bank or trust company. The intent of this existing rule, and MBS's current policy is: (1) To not accept such letters of credit if such acceptance would result in more than 25% of all Market Margin Differential Deposits² in the form of letters of credit consisting of letters from one bank or trust company, and (2) to minimize the risk of concentration in one bank or trust company of a substantial portion of letters of credit deposited as Market Margin Differential. The proposed rule change will clarify the intent of the existing rule and will reflect MBS's current policy.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBS believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants or Others

MBS has not received any comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine

² The term "Market Margin Differential Deposit" means the amount a Participant is required to deposit to MBS's Participants Fund under Article IV, Rule 2 of MBS's Rules.

whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. SR-92-03 and should be submitted by December 18, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28731 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Two Over-the-Counter Issues and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

November 19, 1992.

On November 13, 1992, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading

File No.	Symbol	Issuer
7-9606	SYBS	Sybase Inc. Common Stock \$.001 par value
7-9607	AMAT	Applied Materials Inc. Common Stock \$.01 par value

³ 17 CFR 200.30-3(a)(12) (1992).

privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, i.e., securities not registered under Section 12(b) of the Act.

The above-referenced issues are being applied for as replacements for a previously withdrawn security and the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7-9608	LIPO	Liposome Co. Inc. Common Stock \$.01 par value

Withdrawal of the Common Stock of Liposome Co. Inc. is requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before December 10, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28735 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31490; File No. SR-PSE-92-21]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Criteria for the Composition of Exchange-Traded Stock Index Options

November 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 2, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 under the Act, proposes to amend PSE Rule 7.3 governing the criteria for the composition of Exchange-traded stock index options.¹ Specifically, the PSE proposes to amend Rule 7.3 by adding a new paragraph (j) to the criteria. Proposed paragraph (j) provides that the requirements of Rule 7.3 shall apply unless otherwise determined by the Exchange and approved by the Commission.² The Exchange also proposes to modify its rule pertaining to index multipliers to provide that the multipliers for all Exchange-traded index options shall be 100 unless otherwise determined by the PSE. The text of the proposed rule change is

¹ Among other things, Rule 7.3 provides that no single stock in an index may have a weighted value greater than 50% of the index value, that 50% of the weighted value of a stock index with 20 stocks or less must be options eligible, and that 35% of the weighted value of a stock index with 21 or more stocks must be options eligible.

² Originally, the PSE proposed to delete all the standards contained in Rule 7.3 and replace them with the requirement that the Exchange receive Commission approval to trade a particular stock index option. On September 2, 1992, the PSE amended its filing to not delete the standards contained in Rule 7.3 and add paragraph (j). See letter from Michael D. Pierson, Staff Attorney, PSE, to Thomas R. Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated August 27, 1992.

available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend PSE Rule 7.3, which specifies criteria applicable to the composition of Exchange-traded stock index options. Under the proposal, the existing criteria would be retained, and new paragraph (j) would be added, which would permit the Exchange, upon Commission approval, to designate securities underlying an index that do not meet the existing criteria contained in Rule 7.3. The Exchange believes that adding proposed paragraph (j) to Rule 7.3 is consistent with Rule 24.2 of the Chicago Board Options Exchange's rules.

The proposal would also amend PSE Rule 7.2, which currently provides that the index multiplier for all Exchange-traded index options shall be 100. Under the proposed change, the index multiplier would be 100 unless otherwise determined by the Exchange.³

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

³ But see note 7, *infra*.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).⁴ Specifically, the Commission notes that the underlying securities comprising an index shall continue to be selected by the Exchange in compliance with Rule 7.3 unless the composition of the index is otherwise approved by the SEC.⁵ Accordingly, the Commission continues to believe that the trading of index options in compliance with Rule 7.3 will promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk and by ensuring that index options traded on the PSE are constructed in such a way as not to be readily susceptible to manipulation. In addition, to the extent that the PSE trades index options that do not meet the current standards contained in Rule 7.3, the composition of these index options would be subject to review and approval by the Commission.⁶ Accordingly, the Commission does not believe that the addition of paragraph (j) to Rule 7.3 will compromise or diminish the Exchange's standards regarding the composition of indexes underlying Exchange-traded index options or result in the listing of index options that could have adverse market impacts or lead to trading abuses.

The Commission also believes the Exchange's proposal to apply an index multiplier of 100, unless otherwise determined by the PSE, is consistent with the Act. Specifically, the Commission believes the rule promotes the public interest and protects

⁴ 15 U.S.C. 78f(b)(5) (1982).

⁵ All new index products, including those in compliance with the specific criteria in PSE Rule 7.3, would still need to be approved for trading by the Commission.

⁶ See *supra* note 5.

investors by providing the PSE more flexibility in determining appropriate multipliers for index options traded on the PSE.⁷

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. First, approval of the filing is necessary in light of the Commission's recent approval of a PSE proposal to trade options on the Wilshire 250 Small Cap Index ("Wilshire Index").⁸ Specifically, securities trading through the facilities of the National Association of Securities Dealers' NASDAQ system that are not NMS securities may comprise up to 4% of the Wilshire Index.⁹ However, should a non-NMS security be included in the Wilshire Index without prior approval of the rule filing, the trading of Wilshire Index options, a product which the Commission found to be consistent with the Act, would be inconsistent with PSE Rule 7.3.¹⁰ Second, the Commission believes that the proposed rule change with respect to index multipliers for Exchange-traded index options raises no new regulatory issues. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with sections 6 and 19(b) of the Act.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-92-21 and should be submitted by December 18, 1992.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PSE-92-21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-28730 Filed 11-25-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10 a.m. on Thursday, December 3, 1992, at the U.S. Small Business Administration, 211 Main Street, room 543, San Francisco, CA, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Michael R. Howland, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, CA 94105-1988, (415) 744-6801.

Dated: November 13, 1992.

Caroline J. Beeson,
Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-28826 Filed 11-25-92; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 11 a.m. on Thursday, December 17, 1992, at the Verdugo Club, 400 West Glenoaks Boulevard, Glendale,

CA, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Michael A. Lee, District Director, U.S. Small Business Administration, 330 N. Brand Boulevard, suite 1200, Glendale, CA 91203, (213) 894-2977.

Dated: November 13, 1992.

Caroline J. Beeson,
Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-28828 Filed 11-25-92; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 9 a.m. on Wednesday, December 2, 1992, at the U.S. Small Business Administration, 815 Olive Street, North Conference Room, Mid-Level, St. Louis, MO, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, room 242, St. Louis, MO 63101, (314) 539-6600.

Dated: November 13, 1992.

Caroline J. Beeson,
Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-28829 Filed 11-25-92; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Fargo, will hold a public meeting at 10 a.m. on Thursday, December 3, 1992, at the Kelly Inn in Bismarck, ND, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James L. Stai, District Director, U.S. Small Business Administration, 657 2nd Avenue North, Fargo, ND 58102, (701) 239-5131.

⁷ If the PSE determines to use a multiplier other than 100 for any index options, however, such a determination would require a rule filing submitted pursuant to Section 19(b) of the Act.

⁸ See SEC Release No. 34-31397 (Nov. 3, 1992).

⁹ PSE Rule 7.3 (g) requires that all securities underlying a PSE-traded index option be last-sale reported on a real-time basis, through Consolidated Tape A or B, or as NMS securities through the NASDAQ system. We note that recently NASDAQ non-NMS securities became subject to last sale reporting. Nevertheless, there still remains differences between NASDAQ and NASDAQ-NMS eligibility criteria and, therefore, we would want to continue to determine the appropriateness of non-NMS stocks in an index.

¹⁰ As of July 1, 1992, all of the NASDAQ securities included in the Index were NMS securities.

¹¹ 15 U.S.C. 78s(b)(2) (1988).

¹² 17 CFR 200.3(a)(12) (1992).

Dated: November 13, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-28825 Filed 11-25-92; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lubbock, will hold a public meeting from 10:30 a.m. to 12 noon on Thursday, December 20, 1992, in the Conference Room of the U.S. Small Business Administration Office, 1611 10th Street, suite 200, Lubbock, TX, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Walter Fronstin, District Director, U.S. Small Business Administration, 1611 10th Street, suite 200, Lubbock, TX 79401, (800) 676-1005 or Mr. Kirk Folkner, Chairman, Lubbock District Advisory Council, (806) 379-6411.

Dated: November 13, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-28827 Filed 11-25-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Under Secretary for Economic Affairs

[Public Notice 1730]

Receipt of Application for an Amendment to Permit for Pipeline Facilities to Allow Transport of Slurry Pulp by Existing Transboundary Pipeline

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has received a request from Boise Cascade Corp. to amend a Presidential permit, pursuant to Executive Order 11423 of August 16, 1968, to provide for the additional use for an existing 10 inch pipeline to carry wood pulp slurry. The existing pipeline currently transports whitewater from International Falls, MN, to Fort Frances, Ontario. The new use will add up to 300 bone dry tons per day of pulp to the whitewater being returned for Fort Frances. The pipeline will not need to be physically modified to accomplish this additional use.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before December 28, 1992.

FOR FURTHER INFORMATION CONTACT:

Donald E. Grabenstetter, Office of Global Energy, Department of State, Washington, DC 20520. (202) 647-2857.

Dated: November 6, 1992.

Robert C. Fauver,

Acting Under Secretary of State for Economic Affairs.

[FR Doc. 92-28776 Filed 11-25-92; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration, (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold its next meeting on December 8-9, 1992, at 400 7th Street, SW., room 2201, Washington, DC. The meeting will be from 8:30 a.m. to 5 p.m., on December 8 and from 8:15 a.m. to 12:15 p.m. on December 9. Discussions will include "Motor Carrier Driver Fatigue Research," results of the "North American Free Trade Agreement and other Harmonization Efforts," "Hearings on Zero Base Regulatory Review and FHWA's Initial Reaction," and the Motor Carrier Research Program.

FOR FURTHER INFORMATION CONTACT:

Mr. Douglas J. McKelvey, HIA-20, room 3104, 400 7th Street, SW., Washington, DC 20590, (202) 366-1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: November 13, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-28714 Filed 11-25-92; 8:45 am]

BILLING CODE 4910-22-M

[FHWA Docket No. MC-89-10]

Inspection, Repair and Maintenance; Periodic Motor Vehicle Inspection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to motor carriers on State periodic inspection programs.

SUMMARY: This notice adds the bus periodic inspection (PI) program of the

State of Wisconsin to the list of programs which are comparable to, or as effective as, the Federal PI requirements contained in 49 CFR 396.15 through 396.23. The FHWA published its initial list on December 8, 1989 (54 FR 50726). That list was revised on September 23, 1991 (56 FR 47982). Including Wisconsin, there are 20 States, the Alabama Liquefied Petroleum Gas Board, the District of Columbia, 9 Canadian Provinces and one Canadian Territory which have PI programs which the FHWA has determined to be comparable to, or as effective as, the Federal PI requirements.

DATES: This docket will remain open until further notice.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-89-10, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:

Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS-10, (202) 366-2981; or Mr. Charles Medalen, Office of the Chief Counsel, HCC-20, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 210 of the Motor Carrier Safety Act of 1984 (the Act) (49 U.S.C. app. 2509) required the Secretary of Transportation to establish standards for annual or more frequent inspection of commercial motor vehicles (CMVs), and the retention, by motor carriers, of the records of such inspections. On December 7, 1988, the FHWA published a final rule in the **Federal Register** (53 FR 49402) under FHWA Docket No. MC-113 which implemented the statutory requirements of the Act by amending part 396, Inspection, Repair, and Maintenance, of the Federal Motor Carrier Safety Regulations (FMCSRs). That final rule requires that CMVs operating in interstate commerce be inspected at least once a year. The inspection is to be based on Federal inspection standards, or a State Inspection program determined by the FHWA to be comparable to, or as effective as, the Federal standards. Accordingly, if the FHWA determines

that a State's PI program is comparable to, or as effective as, the requirements of part 396, then a motor carrier must ensure that any of its CMVs which are required by that State to be inspected through the State's inspection program are so inspected. If a State does not have such a program, the motor carrier is responsible for ensuring that its CMVs are inspected using one of the alternatives included in the final rule.

On March 16, 1989, the FHWA published a notice in the *Federal Register* (54 FR 11020) under FHWA Docket No. MC-89-10 which requested States and other interested parties to identify and provide information on the CMV inspection programs in their States. Upon review of the information submitted in response to the notice, the FHWA published a list of State inspection programs which were determined to be comparable to the Federal PI requirements on December 8, 1989 (54 FR 50726). This initial list included 15 States and the District of Columbia. The list was revised on September 23, 1991 (56 FR 47983) to include the inspection programs of the Alabama Liquefied Petroleum Gas (LPG) Board, California, Hawaii, Louisiana, Minnesota, all of the Canadian Provinces, and the Yukon Territory.

Determination: State of Wisconsin Bus Inspection Program

The State of Wisconsin (the State) has initiated an inspection program for buses. The State requires buses which are registered in Wisconsin, or for which Wisconsin issues the base registration or is the base jurisdiction, to be inspected annually. Upon review of the material the State submitted to the FHWA, the FHWA has determined that the Wisconsin bus inspection program is comparable to, or as effective as the Federal PI requirements. Therefore, motor carriers of passengers operating buses subject to the State's PI program must use the State's program to satisfy the Federal PI requirements for those buses.

It should be noted that in accepting the State's PI program, the FHWA also accepts the recordkeeping requirements associated with the inspection program. Wisconsin issues inspection decals for vehicles which pass the State inspection. The State inspection decal is considered by the FHWA as satisfying the Federal requirement for proof of inspection on the motor vehicle.

States With Equivalent Periodic Inspection Programs

The following is a complete list of States with inspection programs the FHWA has determined are comparable

to, or as effective as the Federal PI requirements.

Alabama
(LPG Board)
Arkansas
California
District of
Columbia
Hawaii
Illinois
Louisiana
Maine
Maryland
Michigan

Minnesota
New Hampshire
New Jersey
New York
Oklahoma
Pennsylvania
Rhode Island
Utah
Vermont
Virginia
West Virginia
Wisconsin

In addition to the States listed above, the FHWA has determined that the inspection programs of the 9 Canadian Provinces and the Yukon Territory are comparable to, or as effective as the Federal PI requirements. All other States either have no PI programs for CMVs or their PI programs have not been determined by the FHWA to be comparable to, or as effective as the Federal PI requirements. Should any of these States wish to establish a program or modify their programs in order to make them comparable to the Federal requirements, the State should contact the appropriate FHWA regional office listed in 49 CFR Part 390.

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

T.D. Larson,
Administrator.

[FR Doc. 92-28715 Filed 11-25-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 20, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0150

Form Number: IRS Form 2848

Type of Review: Extension

Title: Power of Attorney and

Declaration of Representative

Description: Form 2848 is used to authorize someone to act for the respondent in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. Data is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons

Respondents: Individuals or households,

Farm, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents/
Recordkeepers: 800,000

Estimated Burden Hours Per

Respondent/Recordkeepers:

Recordkeeping—20 minutes

Learning about the law or the form—
29 minutes

Preparing the form—29 minutes

Copy, assembling, and sending the
form to the IRS—35 minutes

Frequency of Response: On occasion

Estimated Total Reporting/
Recordkeeping: 1,504,000 hours

OMB Number: 1545-1165

Form Number: IRS Form 8821

Type of Review: Extension

Title: Tax Information Authorization

Description: Form 8821 is used to

appoint someone to receive or inspect certain tax information. Data is used to identify appointees and to ensure that confidential information is not divulged to unauthorized persons

Respondents: Individuals or households,

Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents/
Recordkeepers: 200,000

Estimated Burden Hours Per

Respondent/Recordkeepers:

Recordkeeping—7 minutes

Learning about the law or the form—
11 minutes

Preparing the form—22 minutes

Copy, assembling, and sending the
form to the IRS—20 minutes

Frequency of Response: On occasion

Estimated Total Reporting/
Recordkeeping: 202,000 hours

Clearance Officer: Garrick Shear, (202)

622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202)

395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-28737 Filed 11-25-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

November 20, 1992

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0372.

Form Number: ATF REC 5400/2.

Type of Review: Extension.

Title: Records and Supporting Data:

Daily Summaries, Records of Productions, Storage, and Disposition, and Supporting Data by: Licensed Explosives Manufacturers, and Manufacturers (Limited).

Description: These records, prepared by explosives manufacturers and explosives manufacturers (limited) provide ATF with the ability to trace explosives used in crime.

Respondents: Businesses or other for-profit, small businesses or organizations.

Estimated Number of Recordkeepers: 1,053.

Estimated Burden Hours Per

Recordkeepers: 65 hours.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 68,835 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.
[FR Doc. 92-28797 Filed 11-25-92; 8:45 am]

BILLING CODE 4810-31-M

Customs Service

(T.D. 92-110)

Recordation of Trade Name; "Coast Foundry & Mfg., Co."

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: On Thursday, September 10, 1992, a notice of application for the recordation under section 42 of the Act of July 15, 1946, as amended (15 U.S.C. 1124), of the trade name "Coast Foundry & Mfg., Co.", was published in the *Federal Register* (57 FR 41547). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than November 10, 1992. No responses were received in opposition to the notice.

Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "Coast Foundry & Mfg., Co.", is recorded as the trade name used by Coast Foundry & Mfg., Co., a corporation organized under the laws of the State of California, located at 2707 North Garey Avenue, Pomona, CA 91769. The trade name is used in connection with valves and fittings for toilet tanks.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT:

Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Frankline Court), Washington, DC 20229 ((202) 482-6960).

Dated: November 20, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.
[FR Doc. 92-28755 Filed 11-25-92; 8:45 am]

BILLING CODE 4820-02-M

(T.D. 92-109)

Recordation of Trade Name; "Modular Computer Systems, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: On Wednesday, August 26, 1992, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Modular Computer Systems, Inc.", was published in the *Federal Register* (57 FR 38712). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and

received not later than October 26, 1992. No responses were received in opposition to the notice.

Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "Modular Computer Systems, Inc." is recorded as the trade name used by Modular Computer Systems, Inc., a/k/a Modcomp, a corporation organized under the laws of the State of Florida, located at 1650 West McNab Road, P.O. Box 6099, Fort Lauderdale, FL 33340. The trade name is used in connection with computers, computer peripherals, computer programs and computer systems. The merchandise is manufactured in the United States.

EFFECTIVE DATE: November 27, 1992.

FOR FURTHER INFORMATION CONTACT:

Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Frankline Court), Washington DC 20229 (202) 482-6960.

Dated: November 20, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.
[FR Doc. 92-28756 Filed 11-25-92; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name; "WEMCO, Inc."

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "WEMCO, INC.," used by Wemco, Inc., a corporation organized under the laws of the State of Louisiana, located at 966 South White Street, New Orleans, Louisiana 70125.

The application states that the trade name is used in connection with mens and boys neckties, ready ties, bow ties, ties and handkerchief sets and formal wear.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the *Federal Register*.

DATES: Comments must be received on or before January 26, 1993.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights

Branch, 1301 Constitution Avenue, NW.,
(room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Delois P. Cooper, Intellectual Property
Rights Branch, 1301 Constitution
Avenue, NW., Washington, DC 20229
(202-566-6956).

Dated: November 20, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 92-28754 Filed 11-25-92; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 229

Friday, November 27, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:00 p.m., November 30, 1992.

PLACE: Room 201-A Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Open Meeting of July 29, 1992.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: CCC Disbursements Review Report.
4. Memorandum re: Commodity Credit Corporation Financial Condition Report.
5. Memorandum re: Transfer of Funds from Commodity Credit Corporation (CCC) to USDA and Other Agencies for Fiscal Years 1992 and 1993.
6. Docket ICZ-331 re: Commodity Credit Corporation Options Pilot Program for 1993 Through 1995 Crop Years.
7. Memorandum re: Availability of CCC Stocks for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1993.
8. Resolution re: Ratification of Commodities Available for Public Law 480 During Fiscal Years 1992 and 1993.

CONTACT PERSON FOR MORE

INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 690-0490.

Dated: November 23, 1992.

James V. Hansen,
Secretary, Commodity Credit Corporation.
[FR Doc. 92-28892 Filed 11-23-92; 4:56 pm]
BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Matters To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matters will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance

Corporation scheduled to be held at 10:00 a.m. on Tuesday, November 24, 1992, in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.:

Memorandum and resolution re: Statement of Policy on Assistance to Operating Insured Depository Institutions.

Memorandum and resolution re: Proposed amendments to Part 357 of the Corporation's rules and regulations, entitled "Determination of Economically Depressed Regions," which would reflect the Corporation's most recent periodic review and reasonable application of the factors which the Corporation considers in determining which regions are economically depressed.

Recommendation regarding the form of Federal Register notice for publication of the Corporation's determination to provide assistance to an institution prior to the appointment of conservator or receiver.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: November 23, 1992.
Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.

[FR Doc. 92-28905 Filed 11-23-92; 4:57 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:30 a.m., Monday, November 23, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Department of Justice request for information.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting. This copy of the Board's November 13, 1992, notice was made

and resubmitted to the Federal Register on November 23, 1992.

Dated: November 13, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-28916 Filed 11-24-92; 10:48 am]

BILLING CODE 6210-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, December 4, 1992.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 202-254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-28992 Filed 11-24-92; 8:45 am]

BILLING CODE 6351-01-M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: Saturday, December 5, 1992 from 1:30 p.m. to 6:30 p.m. and Sunday, December 6, 1992 from 9:30 a.m. to 3:45 p.m.

PLACE: National Press Building, 529 14th Street, Suite 452, Washington, DC 20045.

STATUS: The meeting will be open to the public with the exception of the 5:30-6:30 p.m. session on Saturday, December 5 and the 11:35 a.m.-12:15 p.m. session on Sunday, December 6, both of which will be closed.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

The Board of Directors of the Commission on National and Community Service will meet on December 5-6 to discuss the report to Congress, committee reports, discretionary funding and approval of grants, and evaluation. Gregg Petersmeyer of the Office of National Service will address the Board on Sunday afternoon. The public is invited to address the Board on Sunday, December 6, from 2:15 to 2:45 p.m.

Portions Closed to the Public

The Board of Directors will be in Executive Session on Saturday,

December 5 from 5:30 to 6:30 p.m. to elect officers of the Board. The Board will be in Executive Session on Sunday, December 6 from 11:35 a.m. to 12:15 p.m. to discuss grant appeals and approval of discretionary grants.

Prior to the opening of the meeting on Saturday, December 5, the Board will take a field trip to the Faith Emmanuel Tabernacle at 217 Upshur Street, NW in Washington, DC. While on the field trip, the Board will view four presentations: Pat Kelly of the Wunder Project/Wise-Up Coalition; women of the 331 Foundation who have lost children to violence; O. Chappell and J. Johnson of D.C. Neighborhood Youth; and Jim Brown who will speak about gangs. The trip will begin at 9:00 a.m. and will end at 12:15 p.m. Members of the public are welcome to attend the presentations.

CONTACT PERSON FOR MORE

INFORMATION: Terry Russell, General Counsel, Commission on National and Community Service, 529 14th Street, NW., Suite 452, Washington, DC 20045, (202) 724-0600.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 92-28991 Filed 11-24-92; 3:22 pm]

BILLING CODE 6820-BA-M

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Wednesday, December 16, 1992 at 10:30 a.m.

PLACE: 1825 Conn. Ave., N.W., Suite 918, Washington, D.C. 20009.

STATUS: Closed pursuant to a vote taken November 18, 1992.

MATTERS TO BE CONSIDERED: Formal rule making—adjustment of the public broadcasting rates and terms.

CONTACT PERSON FOR MORE

INFORMATION: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Conn. Ave., N.W., Suite 918, Washington, D.C. 20009, (202) 606-4400.

Dated: November 24, 1992

Cindy Daub,
Chairman.

Certification of Closed Meeting

The General Counsel of the Copyright Royalty Tribunal hereby certifies, pursuant to 5 U.S.C. 552b(f)(1), and pursuant to Section 301.14(b) of the Tribunal's rules, 37 C.F.R. § 301.14(b), that the Tribunal's deliberations concerning the adjustment of the public broadcasting rates and terms, scheduled to occur on December 16, 1992 (and from time to time thereafter up to 30 days as the Tribunal may, pursuant to 37 C.F.R. § 301.14(a), find appropriate) may properly be closed to public observation.

The relevant exemptions on which this certification is based are set forth in the following provisions of law:

5 U.S.C. 552b(c) (10) (formal rulemaking)
37 C.F.R. § 301.13(i) (formal rulemaking)

The recorded vote of each Commissioner taken November 18, 1992 on the question of a closed meeting is as follows:

Chairman Cindy Daub—Yes
Commissioner Edward Damich—Yes
Commissioner Bruce Goodman—Yes

It is anticipated that, in addition to the Commissioners of the Tribunal, the General Counsel will attend the Tribunal's deliberations.

Date: November 18, 1992.

Linda R. Bocchi,
General Counsel.

[FR Doc. 92-29003 Filed 11-24-92; 3:24 pm]

BILLING CODE 1410-09-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 92-27737

PREVIOUSLY ANNOUNCED DATES AND

TIMES: Tuesday, November 17, 1992, 10:00 a.m., Meeting Closed to the Public

and Thursday, November 19, 1992, 10:00 a.m. Meeting Open to the Public.

These meetings were cancelled.

DATE AND TIME: Tuesday, December 1, 1992 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, December 2, 1992 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Oral Presentation Will Be Open to the Public.

MATTER BEFORE THE COMMISSION:
Americans for Robertson.

DATE AND TIME: Thursday, December 3, 1992 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Future Meetings
Correction and Approval of Minutes
Title 26 Certification Matters
Transfers of Funds from State to Federal Campaigns; Resubmission of Final Rule
Suggested Revision of Interim Rules on Ex Parte Communications (continued from the meeting of November 5, 1992)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:
Mr. Fred Eiland, Press Officer,
Telephone: (202) 219-4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 92-29004 Filed 11-24-92; 3:25 pm]

BILLING CODE 6715-01-M

Corrections

Federal Register

Vol. 57, No. 229

Friday, November 27, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

Correction

In proposed rule document 92-27251 beginning on page 53607 in the issue of Thursday, November 12, 1992, make the following corrections:

1. On page 53608, in the third column, in the first complete paragraph, in the eighth line, "of" should read "to".

§ 17.5 [Corrected]

2. On page 53613:
 - a. In the first column, in § 17.5(b)(3), in the tenth line, "its" should read "in".
 - b. In the second column, in § 17.5(c)(8), in the tenth line, after "not" insert "be" and in the next to last line, "broker, of" should read "broker, or" and "representative or" should read "representative of".

§ 17.8 [Corrected]

- c. In the third column, in the heading of § 17.8(c), "Commission," should read "Commissions".

§ 17.22 [Corrected]

3. On page 53614, in the third column, in the heading of § 17.22,

"Recorekeeping" should read "Recordkeeping".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1993

Correction

In notice document 92-27257 beginning on page 53499 in the issue of Tuesday, November 10, 1992, make the following corrections:

1. On page 53499, in the first column, in the **SUMMARY**, in the second line, "Restriction" should read "Restitution".
2. On the same page, in the second column, in the second full paragraph:
 - a. In the second line, "received" should read "reviewed".
 - b. In the 11th line, "restriction" should read "restitution".
 - c. In the seventh line from the bottom, insert "agreement" after "settlement".
2. On page 53500, in the third column, the signature should read "George B. Breznay".
3. On the same page, in the table, in the 2d column, in the 18th line from the bottom, "KEF-005" should read "KEF-0005".
4. On page 53501, in the first column, "Appendix B" should appear above "October 9, 1992".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 25

RIN 3150-AE32

Access Authorization Fee Schedule for Licensee Personnel

Correction

In rule document 92-21752 beginning on page 41375 in the issue of Thursday, September 10, 1992, make the following correction:

Appendix A-[Corrected]

On page 41376, in the second column, in Appendix A, in footnote 1, in the second line, remove "of".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 35 and 96

[CGD 86-036]

RIN 2115-AC30

Updating Approval and Carriage Requirements for Breathing Apparatus

Correction

In rule document 92-25755 beginning on page 48320 in the issue of Friday, October 23, 1992, make the following corrections:

§ 35.30-20 [Corrected]

1. On page 48324, in the first column, in § 35.30-20(d), in the fourth line remove "used".

§ 96.30-5 [Corrected]

2. On page 48325, in the second column, in § 96.30-5(a), in the sixth and seventh lines remove "National Institute for Occupational Safety and by the".

BILLING CODE 1505-01-D

Friday
November 27, 1992

Part II

**Environmental
Protection Agency**

Premanufacture Notices; Monthly Status
Report for October 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-53160; FRL-4176-5]

Premanufacture Notices; Monthly Status Report for October 1992

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for October 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "[OPPT-53160]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC 20460 (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during October; (b) PMNs received previously and still under review at the end of October; (c) PMNs for which the notice review period has ended during October; (d) chemical substances for which EPA has received a notice of commencement to manufacture during October. Therefore, the October 1992 PMN Status Report is being published.

Dated: November 13, 1992.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for October 1992.

I. 95 Premanufacture notices and exemption requests received during the month:

PMN No.

P 93-0001	P 93-0002	P 93-0003	P 93-0004
P 93-0005	P 93-0006	P 93-0007	P 93-0008
P 93-0009	P 93-0010	P 93-0011	P 93-0012
P 93-0013	P 93-0014	P 93-0015	P 93-0016
P 93-0017	P 93-0018	P 93-0019	P 93-0020
P 93-0021	P 93-0022	P 93-0023	P 93-0024
P 93-0025	P 93-0026	P 93-0027	P 93-0028
P 93-0029	P 93-0030	P 93-0031	P 93-0032
P 93-0033	P 93-0034	P 93-0035	P 93-0036
P 93-0037	P 93-0038	P 93-0039	P 93-0040
P 93-0041	P 93-0042	P 93-0043	P 93-0044
P 93-0045	P 93-0046	P 93-0047	P 93-0048
P 93-0049	P 93-0050	P 93-0051	P 93-0052
P 93-0053	P 93-0054	P 93-0055	P 93-0056
P 93-0057	P 93-0058	P 93-0059	P 93-0060
P 93-0062	P 93-0063	P 93-0064	P 93-0065
P 93-0066	P 93-0067	P 93-0068	P 93-0069
P 93-0070	P 93-0071	P 93-0072	P 93-0073
P 93-0074	P 93-0075	P 93-0076	P 93-0077
P 93-0078	P 93-0079	P 93-0080	P 93-0081
P 93-0082	P 93-0083	P 93-0084	P 93-0085
P 93-0086	P 93-0095	Y 93-0001	Y 93-0002
Y 93-0003	Y 93-0004	Y 93-0005	Y 93-0006
Y 93-0007	Y 93-0008	Y 93-0009	

II. 373 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84-0660	P 84-0704	P 84-1145	P 85-0619
P 85-1331	P 86-0066	P 86-1315	P 86-1489
P 87-0323	P 88-0998	P 88-0999	P 88-1272
P 88-1460	P 88-1753	P 88-1937	P 88-1938
P 88-1980	P 88-1982	P 88-1984	P 88-1985
P 88-1999	P 88-2000	P 88-2001	P 88-2212
P 88-2213	P 88-2228	P 88-2229	P 88-2230
P 88-2236	P 88-2484	P 88-2518	P 88-2529
P 88-2540	P 89-0321	P 89-0396	P 89-0538
P 89-0632	P 89-0721	P 89-0769	P 89-0775
P 89-0836	P 89-0837	P 89-0867	P 89-0957
P 89-0958	P 89-0959	P 89-1038	P 89-1058
P 90-0009	P 90-0158	P 90-0159	P 90-0211
P 90-0261	P 90-0262	P 90-0263	P 90-0372
P 90-0441	P 90-0550	P 90-0558	P 90-0564
P 90-0581	P 90-0608	P 90-1280	P 90-1318
P 90-1319	P 90-1320	P 90-1321	P 90-1322
P 90-1358	P 90-1422	P 90-1527	P 90-1564
P 90-1592	P 90-1635	P 90-1687	P 90-1731
P 90-1732	P 90-1745	P 90-1840	P 90-1893
P 90-1937	P 91-0004	P 91-0051	P 91-0107
P 91-0108	P 91-0109	P 91-0110	P 91-0111
P 91-0112	P 91-0113	P 91-0228	P 91-0242
P 91-0243	P 91-0244	P 91-0245	P 91-0246
P 91-0247	P 91-0248	P 91-0503	P 91-0514
P 91-0548	P 91-0572	P 91-0619	P 91-0659
P 91-0689	P 91-0701	P 91-0732	P 91-0818
P 91-0826	P 91-0914	P 91-0915	P 91-0939
P 91-0940	P 91-0941	P 91-1000	P 91-1009
P 91-1010	P 91-1011	P 91-1012	P 91-1013
P 91-1014	P 91-1015	P 91-1116	P 91-1117
P 91-1118	P 91-1131	P 91-1163	P 91-1190

P 91-1191	P 91-1206	P 91-1210	P 91-1279
P 91-1280	P 91-1281	P 91-1282	P 91-1283
P 91-1297	P 91-1298	P 91-1299	P 91-1321
P 91-1322	P 91-1323	P 91-1324	P 91-1367
P 91-1368	P 91-1369	P 91-1371	P 91-1386
P 91-1394	P 91-1409	P 92-0003	P 92-0031
P 92-0032	P 92-0033	P 92-0044	P 92-0048
P 92-0066	P 92-0067	P 92-0068	P 92-0129
P 92-0168	P 92-0177	P 92-0217	P 92-0244
P 92-0245	P 92-0246	P 92-0247	P 92-0248
P 92-0249	P 92-0250	P 92-0251	P 92-0314
P 92-0343	P 92-0344	P 92-0396	P 92-0412
P 92-0471	P 92-0477	P 92-0478	P 92-0509
P 92-0545	P 92-0546	P 92-0547	P 92-0548
P 92-0549	P 92-0550	P 92-0551	P 92-0552
P 92-0595	P 92-0599	P 92-0606	P 92-0624
P 92-0625	P 92-0649	P 92-0652	P 92-0655
P 92-0656	P 92-0657	P 92-0658	P 92-0660
P 92-0688	P 92-0714	P 92-0755	P 92-0776
P 92-0777	P 92-0787	P 92-0804	P 92-0813
P 92-0918	P 92-0919	P 92-0998	P 92-0999
P 92-1003	P 92-1009	P 92-1029	P 92-1048
P 92-1052	P 92-1053	P 92-1054	P 92-1055
P 92-1062	P 92-1063	P 92-1064	P 92-1065
P 92-1066	P 92-1067	P 92-1068	P 92-1079
P 92-1086	P 92-1091	P 92-1102	P 92-1103
P 92-1112	P 92-1113	P 92-1116	P 92-1117
P 92-1118	P 92-1119	P 92-1125	P 92-1133
P 92-1134	P 92-1135	P 92-1136	P 92-1188
P 92-1192	P 92-1193	P 92-1222	P 92-1253
P 92-1254	P 92-1255	P 92-1283	P 92-1287
P 92-1288	P 92-1291	P 92-1293	P 92-1294
P 92-1295	P 92-1296	P 92-1297	P 92-1298
P 92-1303	P 92-1304	P 92-1305	P 92-1306
P 92-1307	P 92-1308	P 92-1313	P 92-1316
P 92-1322	P 92-1324	P 92-1328	P 92-1340
P 92-1345	P 92-1349	P 92-1352	P 92-1356
P 92-1357	P 92-1363	P 92-1364	P 92-1369
P 92-1377	P 92-1378	P 92-1382	P 92-1383
P 92-1394	P 92-1398	P 92-1399	P 92-1413
P 92-1418	P 92-1419	P 92-1423	P 92-1424
P 92-1425	P 92-1426	P 92-1427	P 92-1428
P 92-1429	P 92-1430	P 92-1431	P 92-1437
P 92-1443	P 92-1444	P 92-1446	P 92-1447
P 92-1448	P 92-1449	P 92-1450	P 92-1451
P 92-1452	P 92-1453	P 92-1454	P 92-1455
P 92-1456	P 92-1457	P 92-1458	P 92-1459
P 92-1460	P 92-1461	P 92-1462	P 92-1463
P 92-1464	P 92-1465	P 92-1466	P 92-1467
P 92-1468	P 92-1469	P 92-1470	P 92-1471
P 92-1472	P 92-1473	P 92-1474	P 92-1475
P 92-1476	P 92-1477	P 92-1478	P 92-1479
P 92-1480	P 92-1481	P 92-1482	P 92-1483
P 92-1484	P 92-1485	P 92-1486	P 92-1487
P 92-1488	P 92-1489	P 92-1490	P 92-1492
P 92-1493	P 92-1494	P 92-1495	P 92-1496
P 92-1497	P 92-1498	P 92-1499	P 92-1500
P 92-1501	P 92-1502	P 92-1503	P 92-1504
P 92-1505	P 92-1506	P 92-1507	P 92-1508
P 92-1509	P 92-1510	P 92-1511	Y 92-0197
Y 92-0200	Y 92-0201	Y 92-0202	Y 92-0203
Y 92-0204			

III. 207 Premanufacture notices and exemption request for which the notice review period has ended during the month (Expiration of the notice review period does not signify that the chemical has been added to the Inventory)

PMN No.

P 88-2518	P 89-0321	P 89-0538	P 89-1058
P 90-0158	P 90-0159	P 90-0441	P 90-0550
P 90-1422	P 90-1564	P 90-1840	P 90-1937
P 91-0004	P 91-0051	P 91-0107	P 91-0108
P 91-0109	P 91-0110	P 91-0111	P 91-0112

P 91-0113 P 91-0242 P 91-0243 P 91-0244 P 92-1164 P 92-1165 P 92-1166 P 92-1167 P 92-1230 P 92-1231 P 92-1232 P 92-1233
P 91-0245 P 91-0246 P 91-0247 P 91-0248 P 92-1168 P 92-1169 P 92-1170 P 92-1171 P 92-1234 P 92-1235 P 92-1238 P 92-1239
P 91-0732 P 91-0826 P 91-0853 P 91-1116 P 92-1172 P 92-1173 P 92-1174 P 92-1175 P 92-1240 P 92-1241 P 92-1242 P 92-1243
P 91-1117 P 91-1118 P 91-1190 P 91-1191 P 92-1176 P 92-1177 P 92-1178 P 92-1179 P 92-1244 P 92-1245 P 92-1246 P 92-1247
P 91-1210 P 91-1324 P 91-1386 P 91-1409 P 92-1180 P 92-1181 P 92-1182 P 92-1183 P 92-1248 P 92-1249 P 92-1250 P 92-1251
P 92-0003 P 92-0048 P 92-0066 P 92-0067 P 92-1184 P 92-1185 P 92-1186 P 92-1187 P 92-1252 P 92-1253 P 92-1254 P 92-1255
P 92-0068 P 92-0217 P 92-0244 P 92-0245 P 92-1188 P 92-1189 P 92-1190 P 92-1191 P 92-1256 P 92-1257 P 92-1258 P 92-1259
P 92-0246 P 92-0247 P 92-0248 P 92-0249 P 92-1192 P 92-1193 P 92-1194 P 92-1195 P 92-1260 P 92-1261 P 92-1262 P 92-1263
P 92-0250 P 92-0251 P 92-0396 P 92-0412 P 92-1196 P 92-1197 P 92-1200 P 92-1201 P 92-1264 P 92-1265 P 92-1266 P 92-1267
P 92-0545 P 92-0546 P 92-0547 P 92-0548 P 92-1202 P 92-1203 P 92-1204 P 92-1205 P 92-1268 P 92-1269 P 92-1270 P 92-1271
P 92-0549 P 92-0550 P 92-0551 P 92-0552 P 92-1206 P 92-1207 P 92-1208 P 92-1209 P 92-1272 P 92-1273 P 92-1274 P 92-1275
P 92-0606 P 92-0649 P 92-0652 P 92-0660 P 92-1210 P 92-1211 P 92-1212 P 92-1213 P 92-1276 P 92-1277 P 92-1278 P 92-1279
P 92-0714 P 92-0804 P 92-0813 P 92-0998 P 92-1214 P 92-1215 P 92-1216 P 92-1217 P 92-1280 P 92-1281 P 92-1302 Y 92-0200
P 92-0999 P 92-1003 P 92-1029 P 92-1155 P 92-1218 P 92-1219 P 92-1220 P 92-1221 P 92-1280 P 92-1281 P 92-1302 Y 92-0200
P 92-1156 P 92-1157 P 92-1158 P 92-1159 P 92-1222 P 92-1223 P 92-1224 P 92-1225 Y 92-0201 Y 92-0202 Y 92-0203 Y 92-0204
P 92-1160 P 92-1161 P 92-1162 P 92-1163 P 92-1226 P 92-1227 P 92-1228 P 92-1229 Y 93-0001 Y 93-0002 Y 93-0003

IV. 67 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE

PMN No.	Identity/Generic Name	Date of Commencement
P 83-0237	G. Substituted pyridine.....	April 11, 1983.
P 84-0917	G. Mixed chromium complexes of substituted hydroxyphenyl azo hydroxynaphthalenes, sodium salts.....	September 17, 1992.
P 85-0433	1-Propanol,3-mercapto.....	April 20, 1987.
P 86-1320	G. Substituted alkene-imide copolymer.....	August 27, 1992.
P 88-0687	G. Aliphatic aromatic polyamine.....	September 14, 1992.
P 88-1271	G. Substituted pyridine.....	July 18, 1992.
P 88-2169	G. Cationic terpolymer of acrylamide.....	July 10, 1990.
P 88-2458	G. Tin-chelate.....	September 18, 1992.
P 90-0559	1-(1-Methylbutoxy)-4-benzenamine hydrochloride.....	November 6, 1991.
P 90-1470	G. Alkylaryl ether sulfate/sulfonate, sodium salts.....	September 23, 1992.
P 90-1531	G. Phosphiniococarboxylates, sodium salts.....	April 30, 1991.
P 90-1984	G. Fatty acid polyamine condensate, phosphate ester salt.....	December 26, 1990.
P 90-1985	G. Fatty acid polyamine condensate, phosphoric acid ester salt.....	December 26, 1990.
P 91-0118	G. Oligomeric silicic acid ester compound, with an hydroxyalkylamine.....	June 14, 1991.
P 91-0260	G. Amine functional epoxy salt.....	March 4, 1991.
P 91-0288	G. Alkoxyated dialky-diethylene triamine, alkyl sulfate salt.....	September 17, 1991.
P 91-0442	G. Ethylene oxide adduct of fatty acid ester with penta erythritol.....	September 17, 1991.
P 91-0487	G. Carbamate derivative.....	July 22, 1991.
P 91-0515	G. Alkylepoxy carboxylate.....	October 7, 1992.
P 91-0886	G. Styrenated methacrylate polymer.....	September 14, 1992.
P 91-1243	G. Amino functional reactive thinner.....	September 27, 1992.
P 91-1346	Ethanol, 2,2'-(Hexylimino)di.....	December 4, 1991.
P 92-0154	G. Substituted polyethylene oxide polymer.....	September 9, 1992.
P 92-0174	G. Peroxide curable fluoroelastomer of vinylidene fluoride and tetrafluoroethylene.....	September 1, 1992.
P 92-0256	G. Poly(butadiene) copolymer latex.....	September 30, 1992.
P 92-0260	G. Polymeric colorant.....	April 3, 1992.
P 92-0313	G. Long-aid alkyl resin.....	September 22, 1992.
P 92-0344	G. 1,3,5-triazin-2-amine, 4-dimethylamino-6-substituted.....	September 22, 1992.
P 92-0445	G. Fatty acid amine condensate, polycarboxylic acid salts.....	June 14, 1992.
P 92-0446	G. Coco acid triamine condensate, polycarboxylic acid salts.....	June 15, 1992.
P 92-0448	G. Reaction products of diisocyanate, glycol ether, alcohols and alkanepolyol.....	September 29, 1992.
P 92-0507	G. Modified rosin resin.....	September 19, 1992.
P 92-0554	G. Styrene-maleimide copolymer.....	September 10, 1992.
P 92-0560	G. Amide.....	October 1, 1992.
P 92-0637	G. Acrylic copolymer.....	September 18, 1992.
P 92-0641	Diethylene glycol:isonanoic acid 2,5-furandione.....	September 19, 1992.
P 92-0670	G. Substituted azo naphthalene sulfonic acid.....	September 28, 1992.

IV. 67 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 92-0700	G Substituted azo naphthalene sulfonic acid.....	September 28, 1992.
P 92-0734	G Phenolic modified alkyl resin	September 29, 1992.
P 92-0752	G Aryl substituted chloromethyl triazine	September 22, 1992.
P 92-0757	G Acrylic copolymer emulsion.....	September 22, 1992.
P 92-0792	G Chlorosilyl-functional polyether ester.....	September 14, 1992.
P 92-0800	X-Hydro-hydroxy-poly(oxo-(methyl-1,2-ethane diyl);1,6-hexane diol(co triethylene glycol) polycarbonate;2-hydroxyethyl acrylate; isophorone diisocyanate.	September 18, 1992.
P 92-0807	G Azo dyestuff	September 12, 1992.
P 92-0850	G Alkyl acetal.....	September 26, 1992.
P 92-0851	G Trialkoxy substituted alkane.....	September 28, 1992.
P 92-0853	G Triazole derivative	October 2, 1992.
P 92-0854	G Reaction product of cationic starch.....	September 26, 1992.
P 92-0869	G Methacrylic acid copolymer.....	September 11, 1992.
P 92-0872	G A polymer of acrylic acid esters, methacrylic acid and methacrylic acid, with an alcohol, ammonium salt.....	September 2, 1992.
P 92-0890	G The ammonium derivative of a copolymer of polyalkyl glycols, toluene diisocyanate and alkyl polyamines.....	October 2, 1992.
P 92-0930	G Polymer salt of alkyl propenoates, substituted alkyl propenoates, ethenyl benzene and ethylene carboxylic acid	September 17, 1992.
P 92-0996	G Styrenated acrylic ester multi-polymer.....	September 21, 1992.
P 92-1020	G Amine functional epoxy resin.....	September 17, 1992.
P 92-1034	G Epoxy novolac acrylate carboxylate	September 6, 1992.
P 92-1035	G Substituted cycloalkane.....	September 29, 1992.
P 92-1047	G Phenylalkylpyram.....	September 21, 1992.
P 92-1060	G Saturated polyester resin	September 26, 1992.
P 92-1070	G Naphthaquinone diazide sulfonyl and methane sulfonyl ester mixture of a poly nuclear hydroxy phenol	September 21, 1992.
P 92-1072	G Polyether polyamine.....	September 30, 1992.
P 92-1081	G Epoxy silicone.....	September 18, 1992.
P 92-1095	G Butanedioic acid, (alkenyl)-, dimetal salt	September 23, 1992.
P 92-1194	Allylmagnesium chloride in tetrahydrofuran (1-propenyl-3-magnesium chloride)	October 7, 1992.
Y 92-0131	G Saturated copolyester resin	September 4, 1992.
Y 92-0139	G Saturated, oil-free polyester resin	September 17, 1992.
Y 92-0171	G Saturated copolymer resin	October 8, 1992.
Y 92-0175	2-Propenoic acid, polymer with butyl 2-propenoate; compound with 2,2'-iminobis (ethanol).....	September 25, 1992.

[FR Doc. 92-28522 Filed 11-25-92; 8:45 am]

BILLING CODE 6560-50-F

Food and Drug Administration

Friday
November 27, 1992

Part III

**Department of
Health and Human
Services**

Food and Drug Administration

**Draft Policy Statement on Industry-
Supported Scientific and Educational
Activities; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****[Docket No. 92N-0434]****Draft Policy Statement on Industry-Supported Scientific and Educational Activities****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing in this notice for public comment its current draft policy statement on industry-supported scientific and educational activities. This draft policy statement describes categories of educational activities that may continue to be funded by industry and yet avoid regulation as advertising or promotional labeling.

DATES: Written comments by January 26, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of External Affairs (HF-24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3390.

SUPPLEMENTARY INFORMATION: Scientific and educational activities on therapeutic and diagnostic products (human and animal drugs, biological products, and medical devices) for health care professionals that are performed by or on behalf of the companies that market the products have traditionally been viewed by FDA as subject to regulation under the labeling and advertising provisions of the Federal Food, Drug, and Cosmetic Act (the act). To permit industry support for educational activities embracing a full exchange of scientific views, FDA has distinguished between those activities supported by companies that are otherwise independent from the promotional influence of the supporting company and those that are not. The agency does not seek to regulate activities that are independent and nonpromotional (i.e., that are not designed to promote the supporting company's products). Activities that fail to fall within this traditional safe harbor are not per se illegal, but they are subject to regulation.

The draft policy statement published in this notice is the result of an effort initiated by the agency several years ago to provide guidance on how the agency applies this longstanding policy. In developing this document, the agency has engaged in an extensive outreach effort with scientific and health care professionals, industry, consumer groups, and other Government agencies to produce a policy statement that strikes a proper balance between the need for industry-supported dissemination of current scientific information and the need to ensure that industry advertising activities meet the requirements of the law.

Although the agency's interaction with these parties during the process of developing this statement revealed general support for the central concepts of the policy, early draft language circulated by the agency sparked considerable debate on how the agency could best achieve its goals. The agency recognizes that the delicate balance reflected in this draft between the need for industry-supported scientific and educational activities and the need to regulate industry labeling and advertising will not end that debate. The agency thus invites comments with regard to all issues raised in this policy statement. These comments may include suggestions of possible alternative approaches (e.g., whether companies should be allowed greater influence or control over educational activities, whether the agency should expend resources in oversight of such activities, whether repeat performances should be subjected to different scrutiny, whether or not companies should be held strictly liable for misleading content in such activities or have a duty to correct misinformation that poses a significant risk to public health).

The agency is especially interested in receiving comments on the single new element of the proposed policy statement, which relates to agency reliance on major accrediting organizations for oversight of scientific and educational programs. The proposed policy statement notes the important role accrediting organizations can play in this process, as well as the agency's desire to avoid undue Government interference in postgraduate and continuing education for health care professionals. The agency thus proposes to rely, to the extent possible, on major accrediting organizations to monitor company-supported educational activities conducted by their accredited providers and ensure that such activities are independent and nonpromotional.

I. Background: Promotion, Education, and Independence

Two important sources of information on therapeutic products (human and animal drugs, biological products, and medical devices) for health care professionals are (1) activities (programs and materials) produced by the companies that market the products and (2) independent scientific and educational activities, such as continuing medical education. Although both provide valuable and sometimes vital information to health care professionals, the companies' programs and materials are subject to the labeling and advertising provisions of the act, whereas the truly independent and nonpromotional activities are not.

This jurisdictional line is important because the constraints on advertising and labeling,¹ when applied to scientific and educational activities, can restrict the freedom of participants to discuss their data or express their views. In particular, discussions of unapproved uses, which can be an important component of scientific and educational activities, are not permissible in programs that are or can be (because the provider is not functionally independent)² subject to substantive influence by companies that market products related to the discussion. The agency has thus traditionally sought to avoid regulating activities that are independent from the influence of companies marketing the products.

Defining the line between activities that are performed by or on behalf of the company, and are thus subject to regulation, and activities that are essentially independent of their influence has been made more difficult due to the increasing role industry has played in supporting postgraduate and continuing medical education.

The agency has traditionally recognized the important public policy reasons not to regulate all industry-supported activities as advertising or labeling. To permit industry support for the full exchange of views in scientific and educational discussions, including discussions of unapproved uses, FDA has distinguished between those activities supported by companies that are otherwise independent from the promotional influence of the supporting company and those that are not. Those activities that have been deemed by the agency to be independent and nonpromotional have not been treated as advertising or labeling, and have not been subjected to the agency's regulatory scrutiny.

In determining whether an activity is independent of the substantive influence of a company, the agency examines whether and to what extent the company is in a position to influence the presentation of information related to its products or otherwise use the

¹ These provisions require the company to ensure that the content does not violate the prohibitions against promotion of unapproved uses, and that discussions of the company's products are not false or misleading in content and do not lack fair balance.

² See section II.B.1.a. of this document.

presentation as an advertising vehicle. FDA is concerned that companies may influence content of educational programs not only directly, by being involved in the selection of speakers or in the treatment of topics, but also indirectly through the nature of the relationship between the company and the provider (e.g., if the provider believes that future financial support from the company depends upon producing programs that promote the company's products). The agency therefore views a written agreement between the supporting company and the provider of the activity regarding the independence of the provider and activity from the influence of the supporting company as an important element in establishing an activity as independent.

The agency believes that the primary responsibility for overseeing the process of post-graduate and continuing medical education and scientific exchange lies with the scientific and health care communities. It is, thus, the goal of the agency to ensure that scientific and educational activities that are not intended to be promotional are designed to be truly independent from promotional influence by the marketers of therapeutic products and to leave the scientific and professional health care communities to oversee independent provider activities.

To help achieve these goals, the agency is providing this draft policy statement that describes the agency's enforcement policy with regard to scientific and educational activities supported by industry. The policy statement seeks to clarify the distinction drawn by the agency between scientific and educational activities that FDA considers nonpromotional and those that the agency considers promotional, and to provide guidance on how industry may support such activities without subjection to regulation under the labeling and advertising provisions of the act. This policy statement also acknowledges the importance of relying on the professional health care communities, rather than the agency, to monitor independent provider activities.

This policy applies only to those company-supported activities that involve discussions related to the supporting company's products or to competing products. A company-supported educational activity or part thereof that does not relate to the company's product, a competing product, or suggest a use for the company's product would not be regulated as a promotional activity under this policy.

II. Policy: Scientific and Educational Activities Supported by Industry

FDA has not regulated and does not intend to regulate under the labeling and advertising provisions of the act industry-supported scientific and educational activities that are independent of the influence of the supporting company. Companies and providers who wish to ensure that their activities will not be subject to regulation should design and carry out their activities based on a written agreement between the company and the provider that the provider will be solely responsible for designing and conducting the activity, and that the program will be educational and nonpromotional in nature.

If the company abides by such a written agreement and does not otherwise circumvent its purpose, the agency does not intend to regulate the activity under the labeling and advertising provisions of the act, nor under the reporting requirements related to labeling or as advertisements.³ The written agreement can thus play an important role in helping to ensure that an industry-sponsored activity comes within the safe harbor traditionally recognized by the agency for independent scientific and educational activities.

The written agreement contemplated by the agency, certain indicia of influence that may subject the activity to regulation as labeling or advertising despite such an agreement, and the agency's intent to rely on major accrediting organizations are described below.

A. Written Agreement

The written agreement is to reflect that the company and provider agree that the activity is to be educational and nonpromotional and that the company has taken steps to ensure that it has no role in the design or conduct of the program that might bias the treatment of the topic. FDA will ordinarily conclude that adequate steps have been taken if, after agreeing on the topic of the program, responsible officials from the supporting company and the provider enter into a written agreement that includes the following:

1. Statement of Purpose

The company and the provider agree that the program is for scientific or educational purposes and not for the purpose of promoting any product and that any discussion of the company's products will be objective, balanced and scientifically rigorous.

2. Control of Content and Selection of Presenters and Moderators

The provider retains and is responsible for exercising full control over the planning of the program's content, including the selection of presenters and moderators. The company agrees not to direct or influence the content of the program and to play no role in the selection of presenters or moderators other than responding to provider requests for suggestions of presenters or sources of possible presenters. (This would not preclude companies from making unsolicited suggestions of speakers to nationally recognized accrediting organizations that compile lists of speakers based on suggestions from industry, professional societies, and other sources for use by independent providers.) If the company responds to such a request from a provider the company agrees (a) to respond or to

confirm its response in writing, (b) to provide (where reasonably possible) the names of more than one suggested presenter, (c) to provide a description of each suggested presenter's qualifications, and (d) to disclose all known significant financial and other relationships between the company and suggested presenter. The provider agrees to seek suggestions for presenters from sources other than the company, to make an independent judgment as to the most appropriate presenters, and to select presenters representing an appropriate diversity of legitimate medical opinion on the topic under discussion when the format permits (e.g., when the format is a panel or series of speakers). If the provider selects a presenter suggested by the company, the provider agrees to disclose that fact to program participants at the beginning of the program.

3. Disclosure of Financial Relationships

The provider agrees to ensure meaningful disclosure, at the time of the program, to the audience of (a) the company's funding of the activity and, (b) any significant relationship between the provider and the company and between individual presenters or moderators and the company (e.g., employee, grant recipient, owner of significant interest or stock).

4. Supporting Company Involvement in Content

The company agrees not to engage in scripting, targeting of points for emphasis, or other activities that are designed to influence the content of the program. This would not preclude limited technical assistance by the company in preparing slides or audiovisual materials (e.g., slides prepared per the request of the presenter that reproduce tables published in scientific reports).

5. Ancillary Promotional Activities

The company agrees not to have any promotional activities, such as presentations by sales representatives, or promotional exhibits, in the same room or in an obligate path to the educational activity, unless the exhibit is within an area that is designated for general exhibits and includes exhibits from different companies marketing alternative or competing therapies. The provider agrees that there will be no advertisements for the company's products in any materials disseminated in the program room.

6. Objectivity and Balance

The provider agrees that when a product marketed by the company or in competition with such a product is to be the subject of substantial discussion, the provider will take steps to ensure that the data will be objectively selected and presented, that both favorable and unfavorable information about the product will be fairly represented, and that there is a balanced discussion of the prevailing body of scientific information on the product and of reasonable, alternative treatment options.

7. Limitations on Data

The provider agrees that there will be meaningful disclosure of any limitations on

³ Ordinarily, postapproval promotional activities for approved products must be reported to or approved by the agency, e.g., the holder of any application approved under section 505 of the act (21 U.S.C. 355) has a continuing obligation under 21 CFR 314.81(b)(3) to submit all advertisements and promotional labeling at the time of initial use or dissemination of the material. The agreement between the supporting company and the provider should be kept on file by the company and available to FDA if requested.

information that is presented. Such limitations or uncertainty include, but are not limited to, data that represent ongoing research, interim analyses, preliminary data or unsupported opinion.

8. Discussion of Unapproved Uses

The provider agrees that if unapproved (unlabeled) uses are discussed, the provider will require that presenters disclose that the product is not approved in the United States for the use under discussion.

9. Opportunities for Debate

The provider agrees that, in the case of live presentations, meaningful opportunities for scientific debate or questioning should be provided during the program.

10. Schedule of Activities

The company and the provider agree to, and record in the agreement, the dates, times, and locations of all presentations.

B. Other Factors in Determining Independence

Entering into and complying with the written agreement described above will ordinarily satisfy FDA that a company-supported activity is independent. If, notwithstanding the written agreement, a question is raised regarding product promotion, the agency will consider the following possible indicia of company influence in evaluating whether to regulate an activity under the labeling or advertising provisions of the act. These factors would be relevant to an overall evaluation of an activity; in the context of an activity conducted under a written agreement, however, no individual factor is likely by itself to stimulate an action based on lack of independence.

1. Provider

a. *Relationship between provider and supporting company:* Legal, business, or other relationships between the company and the provider place the company in a position whereby it may exert influence over the content of the activity (e.g., a provider that is owned by, or is not viable without the support of, the company supporting the activity).

b. *Provider involvement in sales or marketing:* Individuals employed by the provider and involved in advising or otherwise assisting the company with respect to sales or marketing of the company's product are involved in designing or conducting independent scientific or educational activities. Individuals who are involved in promotion of a company's products may not function in the role of independent provider, but could be selected by an independent provider to function as a speaker or moderator.

c. *Provider's demonstrated failure to meet standards:* The provider has a record of

failure to meet standards of independence, balance, objectivity or scientific rigor when putting on ostensibly independent educational programs.

2. Presenters/Moderators

a. *Logistical assistance:* The agency recognizes that in some instances logistical support from industry representatives can be helpful to the provider (e.g., assisting with travel arrangements for the speaker). However, significant contact between industry representatives and presenters may indicate an attempt to influence the presentation.

b. *Suggestion of presenters:* Although there is an inherent tension between the involvement by the supporting company in suggesting presenters and the concept of independence, there is, at present, a perceived need on the part of some providers for this type of input by the company. Thus, the proposed written agreement provides for interaction between the company and provider with regard to presenters. If the company suggests speakers who are or were actively involved in promoting the company's products or who have been the subject of complaints or objections with regard to presentations that were viewed as misleading or biased in favor of the company's products, the agency may infer promotional intent on the part of the company.

3. Program Content

a. *Focus on single product:* The focus of the activity is a single product marketed by the company or a competing product except when existing treatment options are so limited as to preclude any meaningful discussion of alternative therapies. This is not to suggest that each treatment option must be discussed with precisely equal emphasis. Emphasis on a newer or, in the view of the other presenter, more beneficial modality should, however, be provided in the context of a discussion of all reasonable and relevant options.

b. *Multiple performances:* If multiple performances of the same program are held, the agency may exercise a higher level of scrutiny compared with single programs.⁴

4. Program Format

a. *Gifts:* Inducements other than meals or token gifts (e.g., travel or lodging subsidies) are provided to encourage attendance of the target audience.⁵

⁴ FDA recognizes that repeat programs can serve public health interests; Public Health Service components sometimes actively encourage multiple performances on selected urgent topics.

⁵ Consistent with the recently issued AMA guidelines on acceptance of gifts from drug companies, FDA believes that one of the indicia of promotion in the context of educational activities is the need for special inducements for health care professionals to attend. Gifts and payments of

b. *Emphasis on noneducational activities:* The announcement and promotion of the meeting focuses less on its educational content than on leisure or recreational activities.

c. *Audience selection:* Invitation or mailing lists for supported activities are generated by the sales or marketing departments of the supporting company or are intended to reflect sales or marketing goals (e.g., to reward high prescribers of the company's products, or to influence "opinion leaders").

d. *Misleading title:* The title of the program or activity fails to fairly represent the scope of the presentation.

5. Dissemination

Information about the company's product presented in the scientific or educational activity is further disseminated after the initial program or publication, by or at the behest of the company, other than in response to an unsolicited request or through an independent provider as discussed herein.⁶

6. Complaints

Complaints from the provider, presenters or attendees regarding attempts by the company to influence content.

C. FDA Reliance on Major Accrediting Organizations

FDA recognizes the important role accrediting organizations can play in ensuring that industry-sponsored educational activities are independent and nonpromotional. The agency also recognizes the importance of avoiding undue Government interference in postgraduate and continuing education for health care professionals, as the agency seeks to ensure that company advertising and promotional activities meet applicable legal requirements. Thus, the agency, in an exercise of its administrative discretion, will seek to rely to the extent possible on major accrediting organizations to monitor company-supported educational activities conducted by their accredited providers and ensure that such activities are independent and nonpromotional.

Dated: November 19, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

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BILLING CODE 4160-01-F

travel and lodging expenses consistent with these guidelines are not likely to be viewed by the agency as indicia of promotion.

⁶ This is consistent with section II.B.3.b. of this document. Repeat performances are permitted when the decision is made by the provider, possibly with review by a nationally recognized professional organization.

Friday
November 27, 1992

Part IV

**Department of
Education**

**48 CFR Part 3410
Acquisition Regulations; Proposed Rule**

DEPARTMENT OF EDUCATION

48 CFR Part 3410

RIN 1880-AA52

Department of Education Acquisition Regulation

AGENCY: Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department of Education Acquisition Regulation to add new regulations on the use of the metric system. The amendment would require use of the metric system in the acquisition planning phase in accordance with the Metric Conversion Act of 1975, as amended, and would provide policy for using metric units of measurement in solicitations. The intended effect is to provide guidance with respect to the Department's contracting activities; encourage contractors to convert to the International System of Units; and invite contractors to make the Department aware of their ability to furnish conforming supplies and services in metric units.

DATES: Comments must be received on or before January 11, 1993.

ADDRESSES: All comments concerning this proposed regulation should be addressed to Verbena R. Crowley, U.S. Department of Education, 400 Maryland Avenue SW., room 3636, ROB-3, Washington, DC 20202-4700.

FOR FURTHER INFORMATION CONTACT: Verbena R. Crowley. Telephone: (202) 708-8528. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Section 3 of the Metric Conversion Act of 1975, as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, (15 U.S.C. 205b), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. Section 3 requires that, by September 30, 1992, each Federal agency, to the extent economically feasible, shall use the metric system of measurements in its procurements, and other business related activities, subject to certain exceptions stated in that section. Executive Order 12770 (Metric Usage in Federal Governmental Programs) published in the *Federal Register* on July 29, 1991 (56 FR 35801) implements provisions of this Act. This proposed

regulation also responds to guidance issued by the Department of Commerce under the Act (15 CFR part 19, subpart B).

This NPRM proposes a number of major changes from the current regulation. The proposed regulation would—

- Implement requirements of Public Law 100-418, which designates the metric system as the preferred system of weights and measures;
- Require use of the metric system in the acquisition planning phase; and
- Provide a new policy in 48 CFR Part 3410 for using metric units of measurement in solicitations.

Executive Order 12291

This proposed regulation has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. The proposed regulation is intended to implement statutory provisions and is designed to expand the options available to contractors of the Department.

Paperwork Reduction Act of 1980

This proposed regulation has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed regulation.

All comments submitted in response to this proposed regulation will be available for public inspection, during and after the comment period, in room 3636, Seventh and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in this proposed regulation.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulation in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 48 CFR Part 3410

Government procurement, Metric system.

Dated: January 10, 1992.

Editorial Note: This document was received at the Office of the Federal Register November 20, 1992.

(Catalog of Federal Domestic Assistance Number does not apply)

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend subchapter B of chapter 34 of title 48 of the Code of Federal Regulations by adding a new part 3410 to read as follows:

PART 3410—SPECIFICATION STANDARDS AND OTHER PURCHASE DESCRIPTIONS**Subpart 3410.7—Use of Metric System**

Sec.

3410.701 Policy of the Department of Education with respect to use of the metric system.

3410.702 Definitions.

3410.703 Responsibilities of the Department of Education with respect to use of the metric system.

Authority: 15 U.S.C. 205b.

Subpart 3410.7—Use of Metric System

3410.701 Policy of the Department of Education with respect to use of the metric system.

It is the policy of the Department of Education to encourage use of the metric system in industry standards, consistent with the legal status of this system as the preferred system of weights and measures for United States trade and commerce.

3410.702 Definitions.

Department means the United States Department of Education.

Metric system

(1) This term means the International System of Units established by the General Conference of Weights and Measures in 1960.

(2) The units are listed in Federal Standard 376A, "Preferred Metric Units for General Use by the Federal Government."

3410.703 Responsibilities of the Department of Education with respect to use of the metric system.

(a) Consistent with the Federal Acquisition Regulation System, contracting officers of the Department shall—

(1) Accept, without prejudice, products and services dimensioned in metric if they are offered at competitive prices and meet the needs of the Department; and

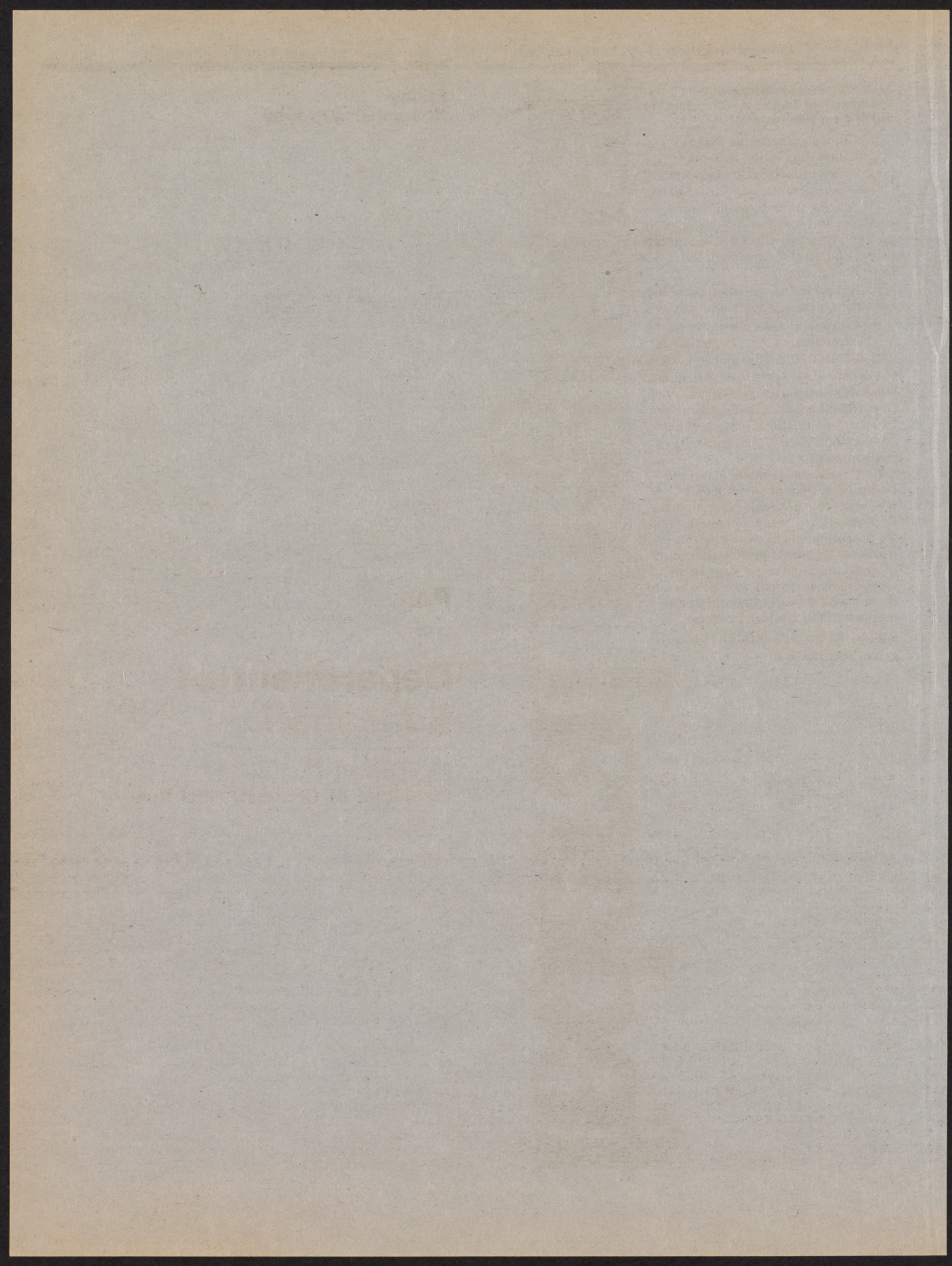
(2) Ensure that acquisition planning considers these products and services.

(b) Consistent with the policy in the Metric Conversion Act, as amended, and in § 3410.701, if the metric system is the accepted system of weights and measures in a particular industry, the Department ensures that solicitations include specifications and purchase descriptions stated in metric units of measurement.

(c) If the metric system is not the accepted system of weights and measures in a particular industry, the Department ensures that solicitations for procurements in excess of the small purchase threshold permit offerors to propose products or services in metric units of measurement, except when to do this would be detrimental to the purpose of the affected program.

[FR Doc. 92-28720 Filed 11-25-92; 8:45 am]

BILLING CODE 4000-01-M



34 CFR Part 73

Friday
November 27, 1992

Part V

**Department of
Education**

34 CFR Part 73

Standards of Conduct; Final Rule

DEPARTMENT OF EDUCATION**34 CFR Part 73****Standards of Conduct****AGENCY:** Department of Education.**ACTION:** Final Regulations.

SUMMARY: The Secretary amends the regulations governing the standards of conduct for Department of Education employees by removing the Department's confidential reporting requirements relating to employment and financial interests. These regulations have been superseded by regulations issued by the Office of Government Ethics that took effect on October 5, 1992.

EFFECTIVE DATE: This amendment will take effect on November 27, 1992.

FOR FURTHER INFORMATION CONTACT: Susan A. Winchell, U.S. Department of Education, 400 Maryland Avenue, SW., room 4022, Washington DC 20202-2110. Telephone: (202) 401-1730. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, D.C. area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Pursuant to title I of the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989, on April 7, 1992, the Office of Government Ethics issued an

interim procedural rule that revises the confidential financial disclosure system for the Executive branch. The interim rule requires Executive branch agencies to review their existing confidential financial disclosure regulations to determine if they need to be removed or modified to conform with the new procedures. Subpart E of 34 CFR part 73 of the Department of Education's regulations is superseded by the procedures provided in subpart I of the interim rule published at 57 FR 11826 on April 7, 1992 (to be codified as subpart I of 5 CFR part 2634). Therefore, the Secretary has determined that part 73 should be amended by removing subpart E.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since these regulations relate to agency management and personnel, they are exempt from notice and comment under 5 U.S.C. 553(a)(2).

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been

found to contain no information collection requirements.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 73

Conflict of interest, Education Department, Government employees, Standards of conduct.

Dated: October 29, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Part 73 of Title 34 of the Code of Federal Regulations as follows:

PART 73—STANDARDS OF CONDUCT

1. The authority citation for Part 73 is revised to read as follows:

Authority: 5 U.S.C. Appendix 4, 5; 18 U.S.C. 201-209; 28 U.S.C. 535; E.O. 11222 (30 FR 6469), 3 CFR, 1964-1965 Comp., p. 306; 5 CFR 735.104, 735.201(a), 2637.212, 2638.103, unless otherwise noted.

2. Subpart E (§§ 73.40 through 73.42) is removed and reserved.

[FR Doc. 92-28722 Filed 11-25-92 8 45 am]

BILLING CODE 4000-01-M

Environmental Protection Agency

Friday
November 27, 1992

Part VI

**Environmental
Protection Agency**

40 CFR Parts 153 and 159
Reporting Requirements for Risk/Benefit
Information; Extension of Comment
Period on Proposed Rule

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Parts 153 and 159****[OPP-60010D; FRL 4175-8]****Reporting Requirements for Risk/
Benefit Information****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Extension of Comment Period.**SUMMARY:** The EPA is extending the comment period on its proposed rule on reporting requirements for risk/benefit information. The extension was requested by the National Agricultural Chemicals Association.**DATES:** The comment period on this proposed rule is extended until December 23, 1992.**ADDRESSES:** Submit written comments, bearing the identification number OPP-60010D by mail to: Public Docket, Field Operations Division (H7502C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person deliver comments to: Public Docket Rm., 1132,

CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning the proposed rule may be claimed to be confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comments that does not contain CBI must be submitted for inclusion in the public record. Information not marked may be disclosed publicly by EPA without prior notice to the submitter. Comments will be available for public inspection in room 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James V. Roelofs, Office of Pesticide Programs (H7501C), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: CM #2, Rm. 1119, 1921 Jefferson Davis Highway Arlington, VA. (703)305-7102.

SUPPLEMENTARY INFORMATION:
Electronic Availability: This document is available as an electronic file on *The Federal Register Bulletin Board* at 9 a.m.

on the date of publication in the **Federal Register**. EPA's proposed rule published as a separate Part VI in the **Federal Register** of September 24, 1992 (54 FR 44290). By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

EPA issued a proposed rule on September 24, 1992 (52 FR 44290) which proposed to codify its interpretations regarding which failures to report information, or delays in reporting, will be considered by EPA to be violations of FIFRA section 6(a)(2), and actionable under FIFRA sections 12(a)(2)(B)(ii) and 12(a)(2)(N). The comment period on the proposed rule expired on November 23, 1992, however, EPA is extending the comment period for an additional 30 days, until December 23, 1992. This extension is at the request of the National Agricultural Chemicals Association.

Dated: November 20, 1992

Victor J. Kimm,*Acting Assistant Administrator for
Prevention, Pesticides and Toxic Substances.*

[FR Doc. 92-28809 Filed 11-23-92; 3:29 pm]

BILLING CODE 6560-50-F

Friday
November 27, 1992

Part VII

**Department of
Education**

**Administrative Dispute Resolution in
Connection With Agency Actions; Notice**

DEPARTMENT OF EDUCATION

Administrative Dispute Resolution in Connection With Agency Actions; Administrative Dispute Resolution Act; Proposed Policy Statement

AGENCY: Department of Education.

ACTION: Notice of proposed policy statement, request for comment.

SUMMARY: The Department of Education (ED) issues a proposed policy statement under section 3(a) of the Administrative Dispute Resolution Act, Public Law 101-552. The proposed statement discusses the policy of the Department with respect to the use of alternative means of dispute resolution as applied to its administrative proceedings and certain other agency actions under Department programs. The Department solicits from all interested parties written comments on the proposed policy statement.

DATES: Written comments should be sent to the Department of Education on or before January 11, 1993.

ADDRESSES: Written comments should be sent to Theodore Sky, Dispute Resolution Specialist, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Theodore Sky, Office of the General Counsel, Telephone (202) 401-2603. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone (202) 708-9300) between 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: On November 15, 1990, President Bush signed into law Public Law No. 101-552, the Administrative Dispute Resolution Act (ADR Act). The ADR Act amends the Administrative Procedure Act, 5 U.S.C. 500, et seq., to authorize the use of alternative means of dispute resolution in lieu of adjudication to resolve issues in controversy. These means include settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration. Certain legal obstacles to the use of alternative means of dispute resolution are removed. The ADR Act, for example, repeals a longstanding prohibition on arbitration where arbitration can be used consistent with the public interest. Administrative Law Judges are given authority to require attendance at prehearing conferences of parties authorized to negotiate resolution of issues in controversy. Other provisions are made to ensure that administrative

dispute resolution is carried out in a fair, efficient and effective manner.

In enacting the ADR Act, Congress found, among other things, that "administrative proceedings have become increasingly formal, costly, and lengthy;" that "alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive and less contentious;" that "such alternative means can lead to more creative, efficient and sensible outcomes;" and that "the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public." (ADR Act, Section 2). The ADR Act is intended to bring about these advantages for Federal agencies through the expanded use of alternative means of dispute resolution.

The Department's efforts to make greater use of alternative means of dispute resolution pre-date the ADR Act. For example, the procedures of the Office of Administrative Law Judges (OALJ), which is vested with authority in the Department to consider a wide range of disputes arising under ED programs, make explicit provision for the mediation of cases. See 20 U.S.C. 1234(h) and 34 CFR 81.13 (1991). Mediation is one of the alternative means of dispute resolution specified in the ADR Act. Parties before the OALJ and other ED adjudicatory bodies also have used settlement negotiations and other alternative means of dispute resolution recognized in the ADR Act to resolve disputes.

As of December 31, 1991, 34 of the 45 cases under the General Education Provisions Act closed by the OALJ since its inception had been closed by settlement. In a number of these cases, mediation contributed to the resolution. In others, settlement negotiations without mediation played the key role. As these figures indicate, the Department is resolving over 75 percent of its OALJ cases through settlement. The Department has thus been consistently successful in resolving adjudicatory matters through techniques identified in the ADR Act before as well as after the enactment of that legislation.

The Department has supported legislation to facilitate the use of alternative means of dispute resolution. In 1988 the Department proposed, and Congress enacted, legislation that permits the Department to compromise cases before the OALJ where the difference between the original claim

and the settlement amount is less than \$200,000. 20 U.S.C. 1234a(j) (1988). In these cases, this measure encourages greater use of alternative means of dispute resolution by simplifying the approval procedures connected with it.

The ADR Act specifically requires each agency to appoint an administrative dispute resolution specialist to assist in implementation of the ADR Act, and to adopt a policy regarding the use of alternative means of dispute resolution (section 3(a) and (b)). The Department already has accomplished the first step. This document is an important milestone in the achievement of the second step. It applies to administrative dispute resolution with respect to formal and informal administrative adjudication, enforcement actions, and contract administration and other actions of the Department. To the extent relevant, in developing this policy statement, the Department has examined the matters specified in section 3(a)(2) of the Act.

Policy of the Department

It is, and has been, the policy of the Department to support fully the goals and objectives of the ADR Act, as set forth in section 2 of the Act, and to seek to attain those goals and objectives wherever feasible through the Department's dispute resolution procedures. The Department's implementation of the ADR Act will be carried out in a manner consistent with E.O. 12778, Civil Justice Reform.

The Department is fully committed to the implementation of the ADR Act through steps already taken, steps listed below, and other actions to be pursued in light of this policy statement. At the same time, the Department recognizes that use of some or all of the alternative means of dispute resolution may be inappropriate where formal adjudication is necessary to achieve accountability or to protect the fiscal interests of the United States from illegal or wasteful practices or expenditures.

For example, the Department believes that use of alternative means of dispute resolution may not be successful, and may serve to delay rather than expedite resolution of disputes, where the issue in controversy pertains to the initial or continued eligibility of an entity to participate in a program administered by the Department, such as those arising under the Higher Education Act of 1965, as amended, or title VI of the Civil Rights Act of 1964. The degree to which an institution has already been provided with an opportunity to propose informal resolution of a claim or a finding of violation is another factor that can

affect the availability of alternative means of dispute resolution during an administrative hearing. However, even in these areas, the Department will consider the use of alternative means of dispute resolution where practicable and consistent with the above-described considerations.

Identifying whether alternative means of dispute resolution should be used in a particular proceeding may not always be easy. The Department is, however, committed to striking a proper balance between the formal adjudication of cases where necessary and their resolution through creatively applied alternative means of dispute resolution where practicable and in the public interest.

Relationship to AMERICA 2000

In April of 1991, President Bush announced the AMERICA 2000 strategy to achieve the National Education Goals. The Department's full support for the ADR Act and the resolution of disputes without the need for formal adjudication, to the maximum extent practicable, has a place in the AMERICA 2000 strategy. The AMERICA 2000 strategy includes the reinforcement of the school as the site of reform, and the elimination of Federal, as well as State, red tape that hampers school-site reform. States are encouraged to allow the leadership of individual schools to make decisions about how resources are used, and Congress has been asked to enact legislation to remove Federal constraints that impede the ability of States to spend education resources most effectively to raise achievement levels. In this same spirit of cooperation and innovation, the use of alternative means of dispute resolution, particularly with State and local educational agencies, can yield acceptable results and support the goal of achieving maximum education flexibility, within legal constraints, in the administration of Federal programs. These efforts may enhance the continuing working

relationship between the Department and State and local agencies, and permit more time and resources at the State and local level to be dedicated to educational reform rather than litigation issues. Under these circumstances, the Department views its implementation of the ADR Act as a positive contribution to the AMERICA 2000 effort.

Further Steps To Be Taken

In furtherance of the policies of the ADR Act, the Department plans to take the following additional steps among others:

(1) Each Principal Operating Component (POC) of the Department will be asked to assign an ADR liaison officer to consider administrative dispute resolution issues within his or her POC and to encourage the expanded use of alternative means of dispute resolution in resolving disputes arising in administrative proceedings involving that POC. These ADR liaison officers will serve as points of contact for matters pertaining to alternative means of dispute resolution within the Department and will collectively study procedural issues pertaining to the use of alternative means of dispute resolution that affect the Department generally, including the proper stage of a dispute at which to invoke alternative means of dispute resolution and the appropriate distribution of mediation costs among the parties to a dispute. The Department will endeavor to provide the liaison officers with appropriate training regarding administrative dispute resolution and the ADR Act.

(2) The Department will continue to design and implement procedures to ensure that all parties are aware of existing opportunities for alternative means of dispute resolution for cases before the OALJ. It will be the practice of the Department's Office of the General Counsel to suggest mediation in appropriate cases where mediation holds promise for early resolution

without undue delay or impairment of the public interest.

(3) The Department will seek to extend the availability of mediation to other administrative proceedings not presently governed by part E of the General Education Provisions Act or part 81 of title 34 CFR.

(4) The Department will conduct a study of its standard agreements for contracts, grants, and other assistance to determine if they need amendment to comply with the ADR Act.

(5) The Department will develop and maintain an efficient system for keeping statistics related to the use of alternative means of dispute resolution in its administrative proceedings.

(6) The Department will continue to coordinate with ACUS on matters related to the use of alternative means of dispute resolution and to avail itself of training opportunities offered by ACUS.

(7) The Department will continue to determine what other agency actions will lend themselves to implementation of the ADR Act and to study how it may encourage the appropriate use of alternative means of dispute resolution by educational agencies, institutions, and organizations that it serves.

Invitation to comment: Interested persons are invited to submit written comments, views, and recommendations regarding the proposed policy statement, or other alternatives to achieve the purposes of the ADR Act. All comments will be available for public inspection during and after the comment period in room 4091, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

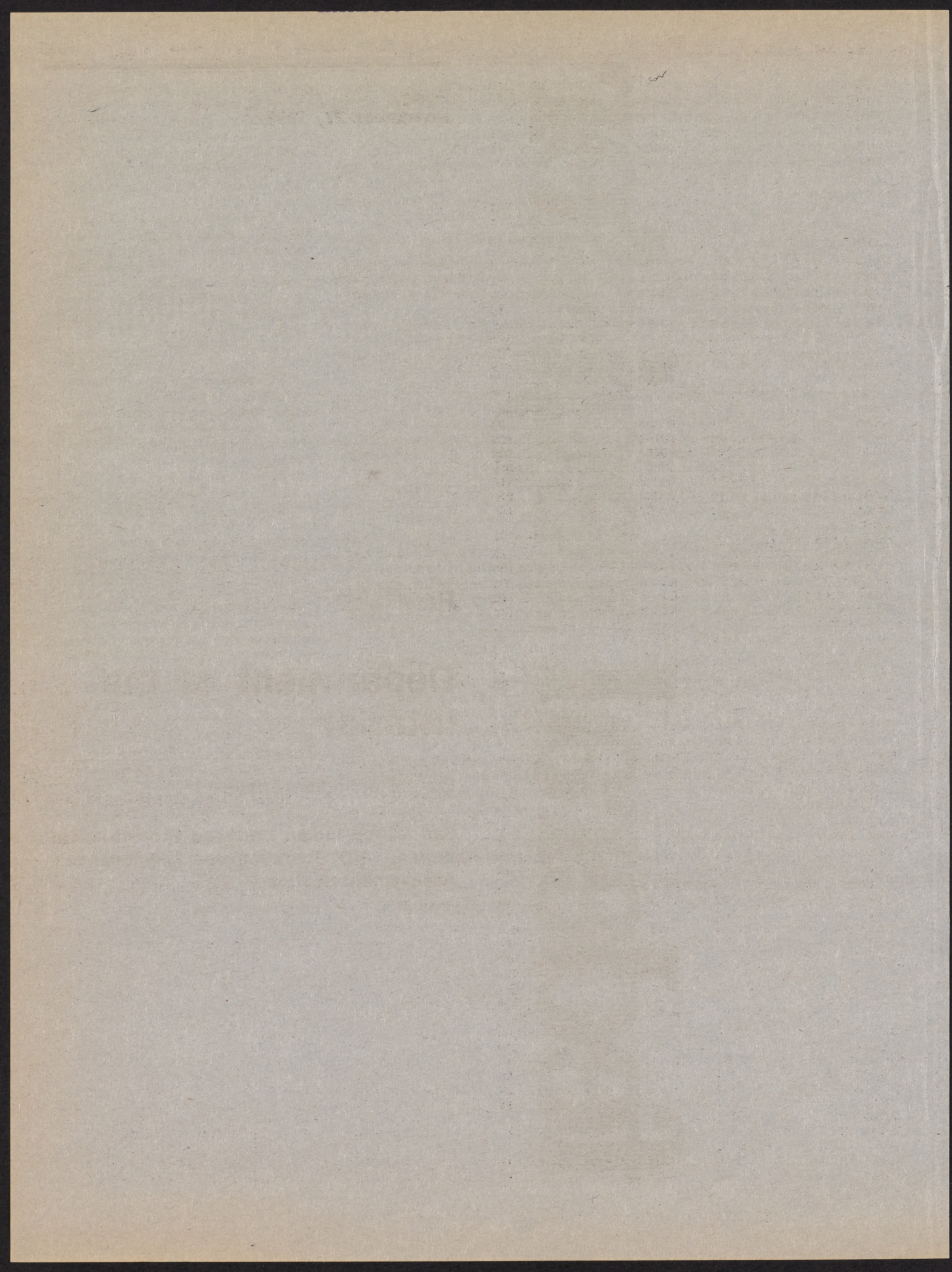
Authority: Pub. L. No. 101-552, section 3 (1990).

Dated: October 1, 1992.

Lamar Alexander,
Secretary of Education.

[FR Doc. 92-28721 Filed 11-25-92; 8:45 am]

BILLING CODE 4000-01-M



**Estimated
Total Project
Cost**

**Friday
November 27, 1992**

Part VIII

**Department of the
Interior**

Bureau of Indian Affairs

**San Carlos Indian Irrigation Project-Indian
Works; 1993 Operation and Maintenance
Assessment; Notice**

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****San Carlos Indian Irrigation Project-Indian Works; 1993 Operation and Maintenance Assessment**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice of rate change.

SUMMARY: The purpose of this general notice is to change the per acre assessment rate for the operation and maintenance of the irrigation facilities of the San Carlos Indian Irrigation Project-Indian Works (SCIIP-Indian Works). The assessment rate is based on a prepared estimate of the costs of normal operations which reflects the costs of the annual assessment paid to San Carlos Indian Irrigation Project-Joint Works (SCIIP-Joint Works), Labor, materials, supplies, equipment, and contractual services. The change in rate

is from \$44.00 per acre to \$56.00 per acre per year.

EFFECTIVE DATE: This general notice shall become effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Paul Smith, Superintendent, Pima Agency, P.O. Box 8, Sacaton, Arizona 85247, telephone (602) 562-3326.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

The current operation and maintenance charges were established in 1984. The inflation rate on labor, materials, supplies, equipment, and contractual services has continued to increase each year until costs now exceed revenue from current charges. The increase in annual assessments paid to the SCIIP-Joint Works is currently 67 percent of the Agency's O&M budget.

The analysis of the cost of operation and maintenance of the SCIIP-Indian Works and the proposed rate increase was presented to the Gila River Indian Community's Water Conservation Committee, non-Indian lessees, and other Tribal Council representatives on September 4, 1992. The responses by the meeting participants were generally favorable.

Notice of the rate increases was published in three local newspapers and letters of notification were sent to the Governor of the Gila River Indian Community and to all non-Indian lessees. The proposed rate increase was also posted at all local U.S. Post Offices.

Dated: November 6, 1992.

Patrick A. Hayes,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 92-28796 Filed 11-25-92; 8:45 am]

BILLING CODE 4310-02-M

Friday
November 27, 1992

Part IX

**Nuclear Regulatory
Commission**

Power Authority of State of New York,
Facility Operating License Amendment;
Notice

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-333]

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-59, issued to the Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The proposed amendment would revise Technical Specification (TS) 3.0.D and its associated Bases to incorporate recommendations of NRC Generic Letter (GL) 87-09, "Sections 3.0 And 4.0 Of The Standard Technical Specifications (STS) On The Applicability Of Limiting Conditions For Operation And Surveillance Requirements." Specifically GL 87-09 provides guidance to address unnecessary restrictions on mode changes by TS 3.0.4 (FitzPatrick TS 3.0.D) and inconsistent application of exceptions.

TS 3.0.D presently states that entry into an operational condition (mode) shall not be made unless the conditions of the Limiting Condition for Operation (LCO) are met without reliance on the provisions of the action requirements. In GL 87-09, the NRC staff presented its position that this specification unduly restricts facility operation when conformance to the action requirements provides an acceptable level of safety for continued operation. For an LCO that has action requirements permitting continued operation for an unlimited period of time, entry into an operational mode or other specified condition of operation should be permitted in accordance with the action requirements. This is consistent with the NRC's regulatory requirements for an LCO. The restriction on a change in operational modes or other specified conditions should apply only where the action requirements establish a specified time interval in which the LCO must be met or a shutdown of the facility would be required.

The proposed amendment would revise TS 3.0.D and its associated Bases to be consistent with the guidance provided in GL 87-09. Specifically, the proposed revision would change TS 3.0.D to read:

Entry into an Operational Condition (mode) or other specified condition shall not be made when the conditions for the Limiting Condition of Operation are not met and the associated ACTION requires a shutdown if they are not met within a specified time interval. Entry into an Operational Condition (mode) or specified condition may be made in accordance with ACTION requirements when conformance to them permits continued operation of the facility for an unlimited period of time. This provision shall not prevent passage through Operational Conditions (modes) required to comply with ACTION requirements. Exceptions to these requirements are stated in the individual specifications.

Bases Section 3.0.D would also be revised to reflect the stated changes to TS 3.0.D.

This proposed amendment is being processed on an exigent basis because the proposed changes are necessary to avoid a delay in the startup of the FitzPatrick plant. FitzPatrick is currently scheduled to startup on December 10, 1992. Since this amendment is required to permit startup of the plant, and the startup date is less than 30 days from the date of this application, insufficient time is available to permit a 30-day public comment period. The licensee could not have avoided this situation because plant modifications associated with fire barrier penetration seals on certain vents and drains have been unavoidably delayed beyond their original scheduled completion. Due to the delayed and emerging fire protection modifications, fire watches posted in the vicinity of degraded fire barriers may be required after the currently scheduled startup date. Emergent modifications to fire door seals may also not be completed by the currently scheduled startup date.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

During full power operation, some action requirements establish an acceptable level of safety for continued operation of the facility for an unlimited period of time. Therefore, to allow [allowing] the facility to startup or change modes while conforming to such action requirements will not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not change design, operation or the testing process. During full power operation, some action requirements establish an acceptable level of safety for continued operation of the facility for an unlimited period of time. Therefore, to allow [allowing] the facility to startup or change modes while conforming to such action requirements will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

During full power operation, the action requirements establish an acceptable level of safety for continued operation of the facility for an unlimited period of time. Therefore, to allow [allowing] the facility to startup or change modes while conforming to such action requirements will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written

comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 28, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles H. Pratt, 1633 Broadway, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 20, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 23rd day of November 1992.

For the Nuclear Regulatory Commission:

Brian C. McCabe,

*Project Manager Project Directorate Division
of Reactor Projects—I/II Office of Nuclear
Reactor Regulation.*

[FR Doc. 92-28921 Filed 11-25-92; 9:37 am]

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A cumulative list of Public Laws for the second session of the 102d Congress was published in Part II of the **Federal Register** on November 23, 1992.

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